



**BILL LEE**  
Governor

## **TENNESSEE BUREAU OF INVESTIGATION**

901 R.S. Gass Boulevard  
Nashville, Tennessee 37216-2639  
(615) 744-4000  
Facsimile (615) 744-4500  
TDD (615) 744-4001



**DAVID B. RAUSCH**  
Director

November 17, 2021

Krista Lee Carsner, Director  
Fiscal Review Committee  
Cordell Hull Building  
425 5<sup>th</sup> Avenue North, G-102  
Nashville, TN 37243-0057

**RE: Approval of Non-Competitive Contract Between  
TBI and Idemia Identity and Security USA, LLC**

Dear Director Carsner:

Please find attached information requested to be reviewed by the Fiscal Review Committee for approval of the Tennessee Bureau of Investigation to enter into a non-competitive contract with Idemia Identity and Security USA, LLC.

The Tennessee Bureau of Investigation (TBI) requests the approval to pursue a ten (10) year contract with IDEMIA for the provision of an upgrade to TBI's AFIS system including video analytics, migration of TBI's AFIS data, cloud-based storage, and support and maintenance. will upgrade its current AFIS to IDEMIA's new AFIS. The new AFIS will include IDEMIA's facial recognition product, Face Expert, and Augmented Vision (on-premises) video analytics applications. The new AFIS will include hosting of TBI fingerprint data on the Microsoft Azure Government Cloud. IDEMIA will provide a seamless migration of State's data from the existing TBI AFIS, maintain workflows and interfaces, and provide a secure, cloud-based hosted AFIS. IDEMIA will provide maintenance and support and evergreen service (continuous software and hardware updates) for the contract term of ten years. IDEMIA's AFIS shall include: FBI CJIS security compliance, high availability architecture, disaster recovery in the cloud, a dedicated test environment for use by TBI, and continuous access to IDEMIA's latest AFIS technology. A ten-year contract term will allow TBI to take full advantage of included upgrades and increased functionality of IDEMIA's new system, confident in a long-term source of supply for guaranteed prices.

IDEMIA has provided AFIS services and hardware to TBI for many years.



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Previously, Contractor was Morphotrak until it merged with another entity and became IDEMIA. It would be prohibitively expensive for TBI to completely replace the current AFIS with a competitor's service. It is not realistically possible for TBI to move to another provider's AFIS given TBI's investment in equipment, software, training, and use of IDEMIA's AFIS. Continuity is of critical importance. It would cost tens of millions of dollars, and a very long investment of time to replace IDEMIA's AFIS with that of a competitor and would result in great disruptions to TBI's operations. Only IDEMIA can maintain and support TBI's current AFIS and seamlessly migrate the current AFIS to a next generation system.

The anticipated maximum liability is \$15,729,556.00 and will be paid for using a combination of federal grant funds for the cost of initial migration to and implementation of next-generation AFIS (total of \$6,000,000), and state funds for maintenance and support charges for ten years (total of \$14,700,520) and reserve amount of \$1,029,036 for possible change orders.

The TBI respectfully submits the above referenced request for consideration and approval. Any additional information will be promptly submitted if requested.

Sincerely,

*Nancy Myers*

Nancy Myers  
Deputy General Counsel

Cc: David Rausch, TBI Director



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Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Mark Naftel Nancy Myers	*Contact Phone:	(615) 289-2321 (615) 744-4105		
*Presenter's name(s):	Patrick Powell				
Edison Contract Number: <i>(if applicable)</i>	TBD	RFS Number: <i>(if applicable)</i>	34800-041421		
*Original or Proposed Contract Begin Date:	February 1, 2022	*Current or Proposed End Date:	January 31, 2032		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Tennessee Bureau of Investigation				
*Division:	CJIS				
*Date Submitted:	November 16, 2021				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Idemia Identity and Security USA LLC				
*Current or Proposed Maximum Liability:	\$15,729,556.00				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2022	FY:2023	FY:2024	FY:2025	FY:2026	FY:2027
\$2,111,781.54	\$5,108,113.04	\$1,575,080.54	\$1,047,071.29	\$815,343.00	\$829,885.05
FY:2028	FY:2029	FY:2030	FY:2031	FY:2032	FY:
\$865,511.87	\$897,379.50	\$928,901.90	\$970,140.46	\$580,347.81	
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			

Supplemental Documentation Required for  
Fiscal Review Committee

<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A
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Supplemental Documentation Required for  
Fiscal Review Committee

<b>*Contract Funding Source/Amount:</b>			
State:	\$9,729,556.00	Federal:	\$6,000,000.00
<i>Interdepartmental:</i>	N/A	<i>Other:</i>	N/A
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			
Method of Original Award: <i>(if applicable)</i>		N/A	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$15,729,556.00 Quote from Contractor	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		No other Contractor can provide the services. Current AFIS is owned by Contractor and Contractor is the only entity that can maintain, support and upgrade AFIS. Another vendor would require buying a new AFIS which is cost prohibitive.	



# STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
[https://tn.service-now.com/sp?id=sc\\_cat\\_item&sys\\_id=a912fd4213b46b80316a73d36144b097](https://tn.service-now.com/sp?id=sc_cat_item&sys_id=a912fd4213b46b80316a73d36144b097)

For additional instructions please visit:  
<https://www.teamtn.gov/sts/planning-services/information-systems-planning/endorsement-request.html>

**FROM :** Mark Naftel  
E-mail : [mark.naftel@tn.gov](mailto:mark.naftel@tn.gov)

**DATE :** 4/14/21 **Received by STS on Wednesday, April 14, 2021**

**RE :** Request for STS Pre-Approval Endorsement

**Applicable RFS #** 34800-041421 (END0000816)

## State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- ☒ Applicable  
☐ Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- ☒ Applicable  
☐ Not Applicable

**STS Endorsement Signature & Date:**

**Stephanie Dedmon,  
CIO (WMH)**

Digitally signed by Stephanie  
Dedmon, CIO (WMH)

Date: 2021.04.29 12:00:58 -05'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

<b>Applicable RFS #</b>	<b>34800-041421 (END0000816)</b>
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Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

<b>Contracting Agency</b>	<b>Tennessee Bureau of Investigation</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Mark Naftel, 615.678.3837, mark.naftel@tn.gov</b>
<p><b>Attachments Supporting Request</b> (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document  <input checked="" type="checkbox"/> Special Contract Request  <input type="checkbox"/> Amendment Request  <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment  <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)         </p>	
<p><b>Information Systems Plan (ISP) Project Applicability</b></p> <p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p> <p>IT Director/Staff Name Confirming (required): Susan Smithson</p> <p> <input checked="" type="checkbox"/> Applicable – Approved ISP Project # 1007942  <input type="checkbox"/> Not Applicable         </p>	
<p><b>Subject Information Technology Service Description</b></p> <p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, <i>etc.</i> As applicable, identify the contract or solicitation sections related to the IT services.</p> <p>New contract to upgrade the Automated Fingerprint Identification System (AFIS) to Idemia's new AFIS.</p>	

## **Attachment: STS Endorsement Recommendation**

STS has the following comments for TBI's consideration:

- 1) The second paragraph from the CPO template Personally Identifiable Information, Section E.11, is missing from the contract.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.





## CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 	End Date	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name			Edison Vendor ID		
Goods or Services Caption (one line only)					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
TOTAL:					
<b>Contractor Ownership Characteristics:</b> <input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Woman Business Enterprise (WBE) <input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE) <input type="checkbox"/> Disabled Owned Business (DSBE) <input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees. <input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other			Sole source.		
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional)		Account Code (optional)			

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
TENNESSEE BUREAU OF INVESTIGATION  
AND  
IDEMIA IDENTITY & SECURITY USA, LLC**

This Contract, by and between the State of Tennessee, Tennessee Bureau of Investigation ("State") and IDEMIA Identity & Security USA, LLC ("Contractor"), is for the provision of an upgrade to TBI's AFIS system including video analytics, migration of TBI's AFIS data, cloud-based storage, and support and maintenance, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a Limited Liability Company.  
Contractor Place of Incorporation or Organization: Delaware  
Contractor Edison Registration ID # 216565

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

a. "AFIS" is the Automated Fingerprint Identification System provided by Contractor that replaces the Legacy AFIS.

b. AFIS Design Documentation is documentation that describes the basic design, functionality and architecture of AFIS and should include a high-level description of AFIS hardware, (servers, network requirements), software, database and security components. The AFIS Design Documentation includes component and/or contextual diagrams of the data workflow and components such as servers, firewalls, load balancers, network connections, IP Addresses, and data diagrams that describe AFIS in detail. AFIS Design Documentation shall include a plan to accomplish data migration as required under Section A.7., Requirements Definition Document, Interface Control Documents, and Data Dictionary. The AFIS Design Documentation can be used to recover AFIS in an event of a disaster or troubleshoot performance and operating issues that can occur after AFIS is placed in production.

c. Agency means for purposes of this Contract a law enforcement entity that is authorized to and has access to submit to the State's Legacy AFIS or AFIS.

d. Automated Fingerprint Identification System is a biometric identification methodology that uses digital imaging technology to obtain, store, and analyze fingerprint data.

e. Biometric Set Identifier means numerical identifier used by FBI to identify a specific impression record of an individual.

f. CJIS is the Criminal Justice Information Services division of the Federal Bureau of Investigation ("FBI") and is comprised of multiple FBI systems containing criminal justice information.

g. Data Dictionary provides detailed information about the business data, such as standard definitions of data elements, their meanings, and allowable values.

h. Data Exchange Services ("DES"). Data Exchange Services provide a means for external and internal systems to communicate. DES supports multiple transports such as files, Java Message Service (JMS) queues, e-mail, File Transfer Protocol (FTP), Secure File Transfer Protocol (SFTP), Simple Object Access Protocol (SOAP) and Remote Method Invocation (RMI) for both reading data (connectors) and send data (responders).

- i. Electronic Biometric Transmission Specification ("EBTS") provides a description of all requests and responses associated with electronic fingerprint and other biometric identification services.
- j. Face Comparison: the examination of two or more separate faces from a digital image or a video frame against a database of faces.
- k. Face Expert™ is a tool offered by Contractor that is primarily used for solving crimes with photo evidence captured from surveillance videos and other sources where a face image exists. Face Expert™ shall include any substitute or replacement service or tool with functionality similar to Face Expert™ offered by Contractor.
- l. Go-Live shall mean: the full replacement of Legacy AFIS by AFIS; use of AFIS by the State in a production environment; and final approval and acceptance of AFIS by of the State.
- m. Image Record Query ("IRQ") is a request for a Ten Print record from NGI.
- n. Image Record Response ("IRR") is the receipt of a Ten Print record results from NGI.
- o. Interface Control Documents ("ICD") shall mean documents produced by Contractor and approved by the State that describe all necessary interfaces for satisfactory functioning of AFIS as set forth in this Contract.
- p. Latent means an unknown impression that could be a print submitted for search in an Automated Fingerprint Identification System.
- q. Legacy AFIS is the State's current Automated Fingerprint Identification System existing and used by State as of the Effective Date.
- r. MBIS Cloud Services shall mean the multiple biometric identification system where backend servers are deployed in the cloud environment.
- s. Mobile Handhelds shall mean an instrument which can facilitate remote authentication and validation.
- t. NGI is the next generation identification currently used by the FBI.
- u. Palm Print shall mean an image acquired of the palm region of the hand.
- v. Rap Back is a record of arrest and prosecution background and is a service used to continuously monitor an individual's identity summary by receiving alerts if there are additions to an individual's identity history summary.
- w. Requirements Definition Document shall mean documents which are used to communicate the aims of a project in a clear, concise way to insure all stakeholders are on the same page, including time line, project outlines, technical specifications, personnel, identification of documentation, and all other information necessary for commencement and successful implementation of the total project.
- x. State Business Day is the period during which the State is open for business, usually Monday through Friday from 8:00 a.m. CT to 4:30 p.m. CT, with the exception of designated holidays.
- y. Ten Print shall mean a generic reference to examinations performed on intentionally recorded friction ridge impressions, usually ten fingers; a controlled recording of available fingers of an individual using black ink, electronic imaging, photography, or other medium on a contrasting background.
- z. Ten Print Cards are known finger impressions recorded in a standard form.

aa. Unsolved Latent is an unknown impression that remains unknown even though it has been searched

bb. Universal Latent Workstation ("ULW") formats a Latent print into an FBI EBTS compliant format for searching against many vendor formats.

cc. Warranty Period is defined as follows: For (i) Livescan devices that are not part of the AFIS the 12 month period commencing upon the Acceptance Date of the devices; (ii) Livescans that are part of the AFIS, the 12 month period commencing upon Go Live; and (iii) for the remainder of the AFIS, the Warranty Period shall commence upon Go Live and shall continue for the Term.

dd. Web Application Service ("WAS"). The Web Application Service (WAS) supports the interface between the workstation clients, services, and the back end. The Web Application Service node enforces the security model used by the Middle Tier (the set of components implementing the business logic, applications services and business process management), applies the business rules associated with a given task, and communicates with the Workflow Service (WFS) to start and complete a workflow step. Application servers can be added to the system as transaction or user requirements grow. New application servers can be assigned to specific groups of workstations, or they can be load balanced, depending on system requirements.

ee. Workflow Service ("WFS") The Workflow Service (WFS) initiates or advances workflow steps based upon the type of transaction and elements within the transaction.

- A.3. Summary. Contractor shall upgrade the Legacy AFIS to Contractor's AFIS in the Microsoft Azure Government Cloud ("Azure Cloud"), including Contractor's Face Expert™ and Augmented Vision (on-premises) video analytics Applications. Contractor shall include a seamless migration of State's data from the existing Legacy AFIS, maintain workflows and interfaces, and provide a secure, cloud-based hosted AFIS. Contractor shall provide Maintenance and Support and Evergreen Obligations for the Term. AFIS shall include: FBI CJIS security compliance, high availability architecture, disaster recovery in the cloud, a dedicated test environment, and continuous access to Contractor's latest AFIS technology.

AFIS and Evergreen Obligations shall include the latest version of Contractor's AFIS software, sufficient data storage capacity as needed by the State, new improved functionality, Contractor provided hardware, disaster recovery functions, and Maintenance and Support for Legacy AFIS and AFIS, all to the extent provided herein. No functionality of the Legacy AFIS shall be lost due to AFIS being implemented that would diminish the user experience, workflow and/or system efficiency.

- A.4. Deliverables. Contractor shall provide an AFIS that shall include:

- a. Advanced Data Services ("ADS")/Workflow Manager. ADS component stores multiple incidents for each person. All incidents are stored in the ADS, and the matching subsystem determines the best quality prints to use for matching to achieve the highest possible score.
- b. Data Exchange Services ("DES").
- c. Web Application Service ("WAS").
- d. Backup Server and Tape. Contractor shall perform daily backup of Legacy AFIS database until Go-Live, including tapes, and AFIS database, as applicable, and verify the backups.
- e. Three (3) card capture workstations, each including: control computer, two (2) x LED twenty-four inch monitors, keyboard, and mouse; flatbed scanner; and card capture workstation.
- f. One (1) latent expert workstation including: control computer, two (2) x LED twenty-four inch monitors, keyboard, and mouse; latent camera assembly and lighting; and latent expert workstation software.

- g. Two (2) Face Expert workstations, each including: control computer, two (2) x LED twenty-four inch monitors, keyboard, and mouse. Face Expert™ provides face image acquisition and matching. Face Expert™ workstation shall include twelve (12) licenses for Face Expert™ software. AFIS shall interface with NGI facial recognition system. The facial recognition portion of AFIS shall include the following:
  - (1) Face Expert™ includes a web browser based solution providing seamless integration of local facial and FBI facial searching directly from AFIS without the need of third party software. Face Expert™ shall allow for demographic and image-based biometric searches and shall include filters that allow the search to be adjusted as new information becomes available. Face Expert™ shall be able to match facial images captured in a standard format such as GIF or JPEG. Additional features included in Face Expert™ include multi-dimensional geometrical matching, skin texture analysis, principal component analysis, side-by-side comparison, vertical comparison, horizontal comparison, and transpose/blend comparison. Face Expert™ shall include a results workspace where a user can consolidate search results, upload, capture or edit images, print or save the line-up created, and review the search results. Face Expert™ allows for a captured facial image or if available composite drawings to be searched with or without descriptor filters. Face Expert™ shall support all (present and future) common image and video file formats, including but not limited to, JPEG, JPG2000, TIFF, GIF, PNG, BMP, and short videos (below 250MB) in, MPEG4-part 2 codecs .WEBM, .WMV, .AVI, and .MOV file formats Face Expert™ shall have the following functionality: ISO 19794-5 and ANSI/NIST-compliant face-image acquisition, enhancement of poor-quality images and images where the subject is not optimally positioned, capability to set up watch lists and generate reports, traceability for all image enhancements for submission to court, and scalable configurations.
- h. Six (6) live scans (station where fingerprints are captured) at locations to be designated by TBI.
- i. Printers. Contractor shall provide printers as required by the State.
- j. Augmented Vision Multimedia Analytic Solution – On Premises. “Augmented Vision” shall have a storage capacity of five (5) terabytes and shall process twenty-four (24) hours of video in twenty-four (24) hours. Augmented Vision shall support both real-time and post-event video processing and analysis, including watch list alerting and post event processing.
- k. Contractor shall provide licenses to the State for all software provided under this Contract or necessary for satisfactory functioning of AFIS, unless there is a specific limitation on the number of licenses for named software included within this Contract. Licenses provided by Contractor shall be available for use by the State or State’s partners that are housed in State’s fusion center located at State’s headquarters. All Contractor software licenses currently held by State for Legacy AFIS shall be converted (at no additional cost to the State) to licenses required for AFIS. Contractor shall provide an additional six (6) licenses for a total of twenty (20) licenses.
- l. Contractor shall provide ICD and Data Dictionary to State.
- m. AFIS shall include the following workflows:
  - (1) Criminal live scan;
  - (2) Local criminal
  - (3) Hard copy criminal card entry;
  - (4) Tennessee Applicant Processing System (“TAPS”);
  - (5) Hard copy TAPS card entry;
  - (6) Law enforcement applicant live scan;
  - (7) Law enforcement hard copy applicant card entry;
  - (8) Local Applicant
  - (9) DNA collection;
  - (10) Mobile;
  - (11) Local card entry;
  - (12) Sex offender registry; and
  - (13) Criminal inquiry only
  - (14) Latent

- (15) FBI Latent
- (16) Remote to TBI TP
- (17) Remote to TBI LT
- (18) Face Known/Unknown
- (19) Rap Back Subscription/Notification

- n. Contractor shall create and provide to the State AFIS Design Documentation at no additional cost. Contractor shall update and keep the AFIS Design Documentation current. Contractor shall deliver an initial copy of the AFIS Design Documentation prior to Contractor Testing.

A.5. AFIS capabilities. AFIS capabilities shall include the following:

- a. The capability to print hard copies of Palm Prints or Ten Print cards for responses to IRQ and IRR.
- b. The capability to view, request, and print multiple FBI NGI Ten Print and Palm Print cards on the same person.
- c. The capability to access, retrieve, and print records from all the FBI's available databases for Latent print purposes.
- d. Fields on the returned IRR shall be visible to the user, printed on the physical card, and to include the following: 2.018 NAM (name), 2.016 SOC (SSN), 2.022 DOB (date of birth), 2.024 SEX, 2.025 RAC (race), 2.2029 BSI (Biometric Set Identifier) and any additional fields that are available or become available in the future according to the most current version of the FBI EBTS.
- e. AFIS shall mandate separate forward and reverse queues for each Agency, current or future, that submits Latents for search. Each Agency shall maintain its own separate queues which shall be "read only" for other non-TBI Agencies in order to prevent any Latent prints from being added or deleted to the submitting Agency's requests. AFIS shall allow for the option to display candidates' responses on the Latent versus Ten Print match report and listed by either State identification number or incident number.
- f. Rap Back capabilities required by the FBI including Rap Back email and Rap Back notification message. Contractor shall be required to interface with any third party providing Rap Back services to the State during the Term.
- g. AFIS shall be compliant with the latest version of EBTS. Compliance with changes to EBTS approved by TBI shall be achieved on a timely basis by Contractor.
- h. Capable of performing the number of searches per hour set out below depending on the search performed. AFIS search capacity shall increase at least five percent (5%) per year during the Term. For capacity purposes of this Contract, a Ten Print Card shall count as one (1) record for capacity purposes. At a minimum, AFIS shall be able to accomplish the following:

Search	Initial Avg. Daily Throughput
Ten Print to Ten Print	2,400
Ten Print to Unsolved Latent	1,920
Palm Print to Unsolved Latent Palm Print	1,170
facial	72
Latent fingerprint to Ten Print	90
Latent Palm Print to Palm Print	36
Latent Palm Print to Unsolved Palm Print	36

Latent fingerprint to Unsolved Latent fingerprint	90
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- A.6. Interfaces. Contractor shall develop, install, and maintain in the AFIS all interfaces previously existing in the Legacy AFIS or functionality equivalent to Legacy AFIS and compliant with CJIS and EBTS, to the extent necessary for AFIS to function to the satisfaction of the State, including an interface for Universal Latent Workstation software.
- A.7. Electronic Data Migration from Legacy AFIS to AFIS.
- a. Contractor shall: (1) perform a database synchronization to ensure all records are migrated and stored on the AFIS database; (2) run system performance checks during migration; and (3) at the request of the State assist in auditing or periodic checking of any portion of the migration process at any time.
  - b. Contractor shall backup Legacy AFIS databases and send databases to Contractor's designated location. Contractor shall perform a residual migration to ensure the entire Legacy AFIS databases are migrated following AFIS Go-Live.
  - c. All Legacy AFIS databases shall be migrated. Contractor shall migrate the State's Legacy AFIS to Contractor's secure, Azure Cloud environment. AFIS shall preserve and retain current: ability to receive IRQ /IRR palm responses from the FBI; and ability to pass TBI mugshots to NGI. Migration shall include migration of all data currently in Legacy AFIS to AFIS.
- A.8. Testing. Contractor shall conduct thorough testing of AFIS prior to delivery to the State ("Contractor Testing") and as needed on an on-going basis. Contractor Testing results shall be reported to the State.
- a. Factory Acceptance Test ("FAT"). After the AFIS Design Documentation has been approved by TBI, Contractor shall submit for State approval an Acceptance Test Plan ("ATP"), that shall define the acceptance test scripts, test procedures, acceptance criteria, and the resolution process for any Deficiencies. Contractor shall configure AFIS workstations at Contractor's designated location. At Contractor's expense, State may send two (2) State representative to Contractor's designated location to participate in the FAT to provide feedback to Contractor on AFIS functionality prior to installation. The approved ATP will be used conduct the FAT. Any issues discovered during the FAT will be documented by Contractor project manager on a punch list and each issue shall be resolved to the satisfaction of State prior to the System Acceptance Test ("SAT").
  - b. The SAT shall demonstrate to the satisfaction of the State that AFIS meets or exceeds all State requirements and expectations. The State-approved ATP shall be used to conduct the SAT. Any issues discovered during the SAT shall be documented on a punch list by Contractor project manager and each issue shall be resolved to the satisfaction of the State prior to Go-Live. SAT shall be conducted after AFIS is installed and prior to training. The SAT shall step through all relevant Contract requirements and demonstrate all capabilities of the installed hardware, software, and the converted databases in AFIS. State personnel shall actively participate in running the SAT. After each SAT test scenario is demonstrated, Contractor and a State representative shall either mark the test as passed or failed. The State representative must agree that that the test scenario was successful in order that a passing score be awarded. Issues related to failures shall be recorded by Contractor project manager in an SAT punch list. Each punch list item shall then be assigned an owner and a target date for resolution. Contractor project manager shall track and report on the punch list status and schedule any necessary retesting. All punch list items shall be resolved to the satisfaction of the State. All interfaces shall be in test mode for completion of SAT. Upon successful completion of SAT, State and Contractor shall sign and date the appropriate test documents. Upon final acceptance and successful use of AFIS in a production environment, State shall provide written approval of Go-Live. Acceptance by the State shall be as set forth in Section A.16. Inspection and Acceptance.

- c. Contractor shall provide a dedicated test environment to be used by the State as required by the State.

A.9. Evergreen Software and Hardware Technical Refresh and Future Technology. The contents of this section shall be defined as "Evergreen Obligations." Contractor's Evergreen Obligations shall include regular updates of the State's Operating Systems and COTS software, such as Windows, Linux, and JAVA to keep AFIS current. Contractor shall conduct a yearly AFIS program review of Evergreen Obligations. Critical patches and updates required to address security vulnerabilities shall be applied as needed. AFIS workstation hardware upgrades shall be provided every five (5) years, or sooner if any hardware becomes obsolete because of a planned software release. As part of the yearly AFIS program review, Contractor shall develop an upgrade or enhancement plan that provides a program roadmap for enhancements that shall be submitted to the State for approval and implemented by Contractor. Maintenance and Support shall be considered part of Contractor's Evergreen Obligations. Evergreen Obligations shall include the following Solution Components:

Solution Components	
Qty.	Description
1	MBIS Cloud Services (primary and DR), including: Advanced Data Services (ADS)/Workflow Manager Data Exchange Services (DES) Workflow Administration Services (WAS) Feature Extraction Services (FES) Multi-Biometric Search Services (MBSS)
3	Card Capture Workstation, including: Control Computer, 2 x LED Monitor, Keyboard, and Mouse Flatbed Scanner Card Capture Workstation Software Central Viewer Software Reviewer Software
1	Latent Expert Workstation, including: Control Computer, 2 x LED Monitors, Keyboard, and Mouse Latent Camera Assembly and Lighting Latent Expert Workstation Software Central Viewer Software Reviewer Software
2	Face Expert Workstation, including: Control Computer, 2 x LED Monitors, Keyboard, and Mouse
20	Ten Print or Latent Expert Concurrent User License
12	Face Expert Concurrent User License
4	Livescan, Fixed Cabinet, 500ppi, Palm, Rolled and Flat/Slap Fingers, Fixed Cabinet, 500ppi, Palm, rolled/flat/slap fingers, [REDACTED] ppi configuration PC, Generic ([REDACTED]), LCD Upgrade, Non-Touchscreen, 22" Cabinet Ethernet Lan Adapter (NIC CARD), Barcode Reader Device w/ Stand Printer, Finger/palm card, Mono, Lexmark Extra Drawer Tray Printer, Tray Only, Finger/palm card, Mono Laser Duplex,



Solution Components	
	UPS - small
2	Livescan, Transportable, 500ppi, Palm, Rolled and Flat/Slap Fingers, Includes Laptop Livescan Software , 500 ppi configurations, Mugshot, Digital Camera, Zoom Lens, Tripod, Barcode Reader Device w/ Stand
1	Electronic Data Migration
1	Augmented Vision Multimedia Analytic Solution (On-Premises)
3	Users Conference attendees - annual
1	IDEMIA I&S Professional Services, including: Technical Requirements Program / Project Management Systems Engineering System Integration Installation / Testing / Certification User Documentation Training Factory and Site Acceptance Test (FAT / SAT) (two attendees for FAT) Evergreen Support for Cloud back-end Support for Workstations / Augmented Vision
	Logistical Services, including: Shipping Carriage Paid To (CPT) Nashville Delivery scheduled upon receipt of order

A.10. Training. Unless specifically agreed to or directed by the State, all training shall be conducted at State's headquarters and via in-person classes. The main goal of training is to ensure that all State operators are comfortable with the operation of AFIS and are confident in their ability to use AFIS. The specific goal of the Ten Print and Latent courses are to help State fingerprint examiners to do their jobs quickly and accurately. Contractor shall produce and submit for State approval an overall training plan ("Training Plan") outlining training for each course. Each course shall provide an overview of all features and functions of AFIS equipment. All training courses shall enable State personnel to develop first-hand understanding of relevant AFIS use. Class sizes shall be based on the number of workstations available for training, with a maximum number of ten (10) individuals per session. There shall not be more than two individuals per workstation. State shall have the right to make audio and video recordings of all training provided under this Contract for its internal purposes. Training courses shall highlight any new features or functionality provided by AFIS that may differ from Legacy AFIS.

a. Specific Training Courses.

- (1) AFIS System Administrator. Contractor shall provide three (3) days of classes, approximately eight (8) hours a day (including breaks) for up to five (5) State students. This course shall teach the skills needed to use and deliver training on the AFIS workstation operations. The course shall cover: LINUX and Windows Operating Systems; user management including adding and removing users, and changing user roles; system (AFIS) management and monitoring; database maintenance and management; system (AFIS) monitoring and troubleshooting; report generation; statistical reporting, including accuracy and productivity; workstation and peripheral operations; and system (AFIS) performance tools.

- (2) Ten Print Operator. Contractor shall provide one (1) day of classes, approximately eight (8) hours a day (including breaks) for up to two (2) State students per workstation. This course shall teach the skills needed to use and deliver training on the AFIS workstation operations. The course shall cover: best practice recommendations; Ten Print/Palm Print entry; identification – Ten Print; fingerprint focal points; deleting and editing minutiae; enhancing fingerprint images; quality control; searches – Ten Print/Palm Print; handling exceptions and errors; “lights out” processing; and processing manual cards.
- (3) Latent Operator. Contractor shall provide two (2) days of classes, approximately eight (8) hours a day (including breaks) for up to two (2) State students per workstation. This course shall teach the skills needed to use and deliver training on the AFIS workstation operations. The course shall cover: best practice recommendations; Latent print entry; fingerprint focal points; deleting and editing minutiae; minutiae encoding and placement; enhancing fingerprint images; Latent searches; searches of the Unsolved Latent; and handling expectations and errors.
- (4) Facial Comparison Training. Contractor shall include Face Comparison training in conjunction with training on Face Expert™. This training shall be five (5) days of classes, approximately eight (8) hours a day (including breaks) for up to ten (10) State students. This training shall be conducted by Dr. Nicole Spaun or a substitute instructor that is approved by the State. The course shall cover: the principles of facial comparison; the principles of facial recognition and facial recognition systems; facial feature properties and analysis; imposter recognition – what it is, how recognition works, and the limitations of recognizing imposters; best practices in facial recognition (government applications); future developments in facial recognition.
- (5) Face Expert™. This training shall be incorporated with Facial Comparison Training and shall be provided for up to two (2) State students per workstation. This course shall teach the skills needed to use Face Expert™. This course shall cover: GUI navigation; case ID creation; importing photos/videos; searching; comparison of search results; lineup creation; printing lineups/wanted posters.
- (6) Augmented Vision. Contractor shall provide appropriate training for use of Augmented Vision as directed by the State.

- b. Training Materials. Training support materials provided by Contractor shall include general system documentation. Materials shall also include visual training aids that relate to automated and manual activities needed for operation and support of AFIS. Instructor-led courses shall rely on realistic training scenarios that present State students with actual operational situations. Contractor shall provide State students with electronic copies of the user documentation relevant to the platform for which they are receiving training. Students shall also receive a copy of training exercises and other supporting materials. Contractor shall provide training materials that include PDF user manuals and handouts that support lecture topics. Students may keep all provided training materials. In addition to specific training materials, Contractor shall provide to the State comprehensive, up-to-date, and easily referenced documentation that contains concise, easy-to-follow, cross-referenced, and indexed procedures for training and AFIS operation. The documentation shall be in PDF format or equivalent. The State may print for its internal use an unlimited number of this documentation.
- c. Ongoing Training and Knowledge Transfer. Contractor shall provide additional training at no additional cost at the request of State to train State users when new software, hardware, or features are provided. State shall send up to three (3) representatives annually to Contractor’s users’ conference. Contractor shall pay for reasonable travel, lodging, and food expense for these State representatives. Contractor shall distribute periodic technical bulletins to the State regarding AFIS.

A.11. Annual Conference Training. Contractor shall provide at no cost to the State provision for three (3) individuals that work with the AFIS to attend Contractor’s annual users conference and any expenses associated with the attendance in order to be updated on latest techniques and technology associated with fingerprinting.

A.12. Professional Services. Contractor shall provide professional services consisting of: providing technical requirements; program and project management; systems engineering; system integration; installation, testing, and certification.

A.13. Maintenance and Support

"Maintenance and Support", for purposes of this Contract, is defined as activities that are required to keep the Legacy AFIS or AFIS performing effectively and efficiently.

"Maintenance and Support" is also defined as including updates, upgrades, releases, repairs, modifications, new development, patches, bug fixes, and problem management as further set out in this Contract. Maintenance and Support fees, as set forth in Section C.3, shall include all fees or charges for annual support, including AFIS hosting and any other cloud fees, all licenses necessary for AFIS, and Evergreen Obligations. Contractor shall maintain the Legacy AFIS or AFIS so that they are operating free of Defects. Maintenance and Support shall include any patches for the Legacy AFIS or AFIS, any upgrades to the Legacy AFIS or AFIS that are necessary for the operation of the Legacy AFIS or AFIS, and any upgrades to the Legacy AFIS or AFIS that are necessary for the operation of the Legacy AFIS or AFIS due to an unsupported software version. Maintenance and Support of the Legacy AFIS or AFIS, including Operating System used by State, shall extend for the Contract Term for all current functionality of the Legacy AFIS or AFIS and any changes, modifications, upgrades, enhancements or any new functions or features to the Legacy AFIS or AFIS that may occur during the Contract.

Contractor shall provide Maintenance and Support for the Legacy AFIS or AFIS during State Business Days. Telephone support shall be available twenty-four (24) hours a day, seven (7) days a week for Critical Problems as described further in this Contract. Contractor shall provide software support that includes unlimited telephone technical support, remote dial-in access, and automatic call escalation. At a minimum, Contractor shall maintain the Legacy AFIS or AFIS with all the same functionality as it has on the Effective Date of the Contract. Contractor shall provide an on-site, dedicated technician that is available during State Business Hours. Contractor shall assign only personnel that have passed a fingerprint-based background check as performed by the State and have a current CJIS certification. Contractor shall provide Maintenance and Support for all Operating Systems used by the State in connection with Legacy AFIS or AFIS, including [REDACTED]. Throughout the Term, Contractor shall provide Maintenance and Support to Legacy AFIS or AFIS even if an Operating System used by the State in connection with Legacy AFIS or AFIS becomes unsupported by the Operating System manufacturer or provider. Contractor shall provide Maintenance and Support for hardware used in Legacy AFIS listed in Attachment 2 until migration to AFIS is complete.

Contractor's obligation to support the Legacy AFIS shall end upon Go-Live of the AFIS.

Contractor shall provide problem management as part of the Maintenance and Support of the Legacy AFIS and AFIS. State shall report problem to the Contractor at an agreed upon email address. Critical Problems may be reported via phone at an agreed upon phone number. AFIS shall be available 99.9% of the time calculated on a twenty-four (24) hours a day, seven (7) days a week basis, with the exception of planned service outages approved in advance by the State.

- a. Maintenance. Contractor shall provide software upgrades and include improved matching algorithms, more user friendly GUIs, improved reporting functionality, and enhanced security features during the Term. Contractor shall provide software upgrades in the following three (3) categories: supplemental releases – bug fixes, indicated by second-point releases, such as 5.6x; standard releases – incremental upgrades, indicated by a first-level release, such as 5.x; and product releases – next generation upgrades, indicated by a change in the first digit, such as X.1. Contractor shall provide training with any standard or product releases.

b. Support Plan.

(1) Problems ("Problems") are divided into three (3) categories and defined, as follows:

i. Critical Problem –

Total System Failure

- a. Problems or issues in the Legacy AFIS or AFIS that interrupt or prevent the entire customer population from performing regular business operations; or
- b. Problems or issues caused by the Legacy AFIS or AFIS having a catastrophic impact defined as disrupting other systems of State or external customers from performing regular business operations; or
- c. Problems in which data may be lost or corrupted.

ii. Major Problem –

Critical Failure

- a. Problems or issues in the Legacy AFIS or AFIS that interrupt or prevent a significant percentage (25% or more) of the customer population from performing regular business operations; or
- b. Problems or issues caused by the software/service having a major impact on regular business operations by not working in a particular capacity, a slower than normal capacity, or requiring State to troubleshoot with each external customer experiencing the issue.
- c. Problems where Legacy AFIS or AFIS do not work as specified, but there is a simple work-around.
- d. Problems must be where there is no data loss or corruption. If data loss or corruption, the problem shall be deemed critical.

iii. Minor Problem –

Non-Critical Failure

- a. Problems or issues in the Legacy AFIS or AFIS that interrupt or prevent an individual from performing regular business operations;
- b. Problems or issues having a minor impact on regular business operations. Minor impact is defined as Legacy AFIS works but optional features are not working properly and the feature does not impact external customers' business needs;
- c. Information requests;
- d. Problems involving minor user interface;
- e. Problems where aspects or features of Legacy AFIS or AFIS are missing or failing;
- f. Problems must be where there is no data loss or corruption. If data loss or corruption, the problem shall be deemed Critical.

(2) For each of the above Problem types, the following actions must be taken to resolve the Problem as follows (each time period shall be construed as "action completed within XX timeframe"):

**Actions shall follow the following time frames:**

- A.14. Disaster Recovery. Contractor shall provide disaster recovery for the State's AFIS. All equipment and hardware needed in order for Contractor to provide disaster recovery function to the State shall be provided by the Contractor at no additional cost to the State. Contractor shall be responsible for disaster recovery of all operations and data hosted in the cloud including geo-redundant disaster recovery. Contractor shall submit for State approval a detailed disaster recovery plan for all AFIS operations and data, and Contractor shall meet all requirements of this disaster recovery plan.
- A.15. Limited Warranty. Contractor warrants that, (A) during the Warranty Period, (i) the MBIS Cloud Services identified in the Solution Components table in Section A9 will conform to the terms and conditions of this Contract, the Contractor's published specifications, and perform in accordance with the Documentation, (ii) the MBIS Cloud Services conform and will continue to conform to all applicable laws and regulations, and (iii) the MBIS Cloud Services will be performed in a professional manner by duly qualified Contractor staff using reasonable care. TBI acknowledges that the MBIS Cloud Services may not satisfy all of TBI's requirements, and access to the Site or use of the MBIS Cloud Service may not be uninterrupted or error-free; and (B) the Workstations and Livescans, provided by Contractor, shall conform to the terms and conditions of this Contract throughout the Warranty Period.

Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A16. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.
- A.17. The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:
- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
  - (2) the specific effort involved in completing the change(s);
  - (3) the expected schedule for completing the change(s);

- (4) the maximum number of person hours required for the change(s); and
- (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- b. **Change Order Performance**— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- b. **Change Order Remuneration**— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.
- d. Notwithstanding anything to the contrary in this Contract, if, following the Effective Date of the Contract, there is a significant change to an existing State law, regulation or policy, or if a new State law, regulation or policy is enacted, that significantly affects the services provided under this Contract, a Change Order may be required. In the event that a Change Order will not be sufficient to meet any such legally required legal changes, the Contract may be amended. Changes to State laws, regulations, or policies necessary to comply with CJIS requirements shall not be subject to this Section A.17.

## **B. TERM OF CONTRACT:**

This Contract shall be effective on February 1, 2022 (“Effective Date”) and extend for a period of one hundred and twenty (120) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

## **C. PAYMENT TERMS AND CONDITIONS:**

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Fifteen Million Seven Hundred Twenty-Nine Thousand Five Hundred Fifty-Six Dollars \$15,729,556 (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount
Approval and signing of the Requirements Definition Document (targeted thirty (30) days after Effective Date)	\$ 500,000
Delivery and approval of the Interface Control Document (targeted sixty (60) days after Effective Date)	\$ 500,000
Delivery and approval of the Data Dictionary (targeted sixty (60) days after Effective Date)	\$ 500,000
Successful Factory Acceptance Test (FAT) completed and approved (due eight (8) months after Effective Date)	\$ 2,000,000
Successful System Acceptance Test (SAT) of AFIS and delivery and installation of relevant hardware and delivery, installation, and acceptance of Augmented Vision (targeted three (3) months after approval of FAT)	\$ 1,500,000
Full acceptance and Go-Live of AFIS (targeted three (3) months after delivery of training and user documentation)	\$ 500,000
Delivery of training and user documentation (targeted three (3) months after delivery, installation, and acceptance of Augmented Vision Solution)	\$ 500,000
Maintenance and Support, to be paid on a monthly basis, for year one (1) of the Contract, \$ 70,904.50 per month. Annual total in column to the right.	\$ 850,854
Maintenance and Support, to be paid on a monthly basis, for year two (2) of the Contract, \$ 70,904.50 per month. Annual total in column to the right.	\$ 850,854
Maintenance and Support, to be paid on a monthly basis, for year three (3) of the Contract, \$ 64,298 per month. Annual total in column to the right.	\$ 771,576
Maintenance and Support, to be paid on a monthly basis, for year four (4) of the Contract, \$ 67,945.25 per month. Annual total in column to the right.	\$ 815,343
Maintenance and Support, to be paid on a monthly basis, for year five (5) of the Contract, \$ 67,945.25 per month. Annual total in column to the right.	\$ 815,343
Maintenance and Support, to be paid on a monthly basis, for year six (6) of the Contract, \$ 70,853.66 per month. Annual total in column to the right.	\$ 850,243.92

Maintenance and Support, to be paid on a monthly basis, for year seven (7) of the Contract, \$ 73,907.25 per month. Annual total in column to the right.	\$ 886,887
Maintenance and Support, to be paid on a monthly basis, for year eight (8) of the Contract, \$ 76,005.75 per month. Annual total in column to the right.	\$ 912,069
Maintenance and Support, to be paid on a monthly basis, for year nine (9) of the Contract, \$ 79,372.33 per month. Annual total in column to the right.	\$ 952,467.96
Maintenance and Support, to be paid on a monthly basis, for year ten (10) of the Contract, \$ 82,906.83 per month. Annual total in column to the right.	\$ 994,881.96

C.3.c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.17., without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section A.17., PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed SEVEN PERCENT (7 %) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.14.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
	\$ 200 per hour
<b>NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.</b>	

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Bureau of Investigation  
901 R S Gass Boulevard  
Nashville, Tennessee 37216

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Tennessee Bureau of Investigation;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);



- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided. Contractor shall have the ability to review and dispute any findings prior to reduction of such amounts

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Kenneth Blue  
TBI  
901 R.S. Gass Blvd  
Kenneth.Blue@tn.gov  
Telephone # 615-744-4078

The Contractor:

George Hodges  
IDEMIA, LLC  
5515 East LaPalma Avenue, Suite 100  
Anaheim, CA 92807  
george.hodges@morpho.com  
Telephone # 407-595-4438 FAX # 714-238-2049

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall

the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an

illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages

of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the

Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising

from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments One and Two;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under

penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. Approval by the State will not be unreasonably withheld. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. Upon receipt of a claim or lawsuit naming the State, the Contractor agrees to provide the State with a complete copy of all insurance policies, including any amendments and/or endorsements...

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to



give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: the minimum insurance coverage requirements and policy limits shown in this Contract. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. **Automobile Liability Insurance**

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. **Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance**

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000 per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright,); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. **Crime Insurance**

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.

Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred fifty thousand (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

D.33. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents

of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, shall: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The foregoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor.

- E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.5. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services

under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.6. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 compliant encryption technologies.

The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

- (3) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (4) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (5) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction or, as to any data held by IDEMIA's cloud hosting provider, within the period applicable under the provider's standard procedures.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies. The State's Enterprise Information Security Policies document is found at the following URL:  
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals..
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

This subsection "c," the term "Subcontractor" does not include the Contractor's cloud hosting provider. Any audit of such provider must be arranged by the State and such provider.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

The Contractor and the Contractor's cloud hosting provider shall be subject to an annual examination engagement by a qualified and reputable CPA firm in accordance with the standards of the American Institute of Certified Public

Accountants for a System and Organization Controls (SOC) 2 Type 2 examination. The Contractor must provide the complete SOC 2 Type 2 examination report to the State or the Comptroller of the Treasury (State Parties) upon request from the State Parties. The Contractor must also assist the State Parties with obtaining the relevant SOC examination report from the Contractor's cloud hosting provider. For both the Contractor and the Contractor's cloud hosting provider, the SOC 2 Type 2 examination must include the Security, Confidentiality, Availability, and Processing Integrity Trust Services Criteria. For any examination issues or exceptions noted in the Contractor's SOC 2 Type 2 examination report, the Contractor shall submit corrective action plans to the State upon request from the State. For any examination issues noted in the cloud hosting provider's SOC 2 Type 2 examination report, the Contractor must, in good faith, assist the State Parties in determining the risk to State data.

In the event the CPA firm issues a modified audit opinion in the Contractor's SOC 2 Type 2 examination, meaning that the opinion is qualified, adverse, or disclaimed, the Contractor will advise the State as soon as possible in writing of its plan to correct the issues that caused the modified opinion. The Contractor must demonstrate to the State Parties that the issues have been corrected prior to the commencement of the next scheduled SOC examination.

If the scope of the Contractor's most recent SOC examination report does not include all of the current State fiscal year, upon request from the State Parties, the Contractor must provide to the State Parties a bridge letter, as such term is commonly defined in the auditing industry, from the Contractor stating whether the Contractor made any material changes to their control environment since the prior examination and, if so, whether the changes, in the opinion of the Contractor, would negatively affect the auditor's opinion in the most recent examination report.

No additional funding shall be allocated for these SOC examinations as they are included in the Maximum Liability of this Contract.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
    - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: Two (2) hours
    - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: Two (2) hours
  - (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. The State shall provide the Contractor will such assistance and support as is necessary to perform such Tests. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of

separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

- E.7. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.8. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.9. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.10. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E.11. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its

obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor.

Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. If an Unauthorized Disclosure caused by the Contractor has occurred, the Contractor shall provide no cost credit monitoring services for individuals whose PII was affected by such Unauthorized Disclosure which was caused by the Contractor. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure caused by the Contractor, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

- E.12. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.



IN WITNESS WHEREOF,

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**STATE AGENCY NAME:**

---

**NAME & TITLE**

**DATE**

ATTACHMENT ONE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

**If the attestation applies to more than one contract, modify the following paragraph accordingly.**

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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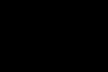

















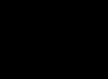
**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

Attachment Two

The following table lists the hardware used in Legacy AFIS that will be covered under support and maintenance coverage until migration to AFIS is complete:

		9x5	24	24x7	2
		9x5	24	24x7	2
		9x5	24	24x7	2
		9x5	24	24x7	2
		9x5	24	24x7	2
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		9x5	24	24x7	2
		9x5	24	24x7	2
	9x5	24	24x7	2	

[illegible]

## FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)

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This template prescribes the format and content for contracts involving the purchase of goods or services from an individual, business, or non-profit. This contract template requires the expenditure of State funds.

Procurement professionals shall adhere to this template with revisions only as instructions permit. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office*.

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Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated with appropriate font and color. The standard FA Template begins on the following page. Additional instructions, considerations, and options follow the standard FA Template.

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Page 1

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**STATE AGENCY NAME**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, **State Agency Name** ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **Scope of Goods or Services Caption**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:  
a.

A.#. **Specify the goods, services, deliverables, technical specifications, timelines, and delivery requirements that the Contractor must provide and meet (sufficient detail is required to ensure contractor accountability and definitive results).**

A.#. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.#. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on **DATE** ("Effective Date") and extend for a period of **number (#) months** after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
<b>Milestone</b>	<b>\$ Number</b>
<b>Unit</b>	<b>\$ Number each</b>
<b>Job Title /Activity</b>	<b>\$ Number per Hour /Day /etc.</b>
<b>Use &amp; Repeat Rows Above as Necessary</b>	

**Add Contingently Required Subsections as Appropriate (refer to instructions for details)**

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

**State Agency Billing Address**

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

(1) Invoice number (assigned by the Contractor);



- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: **State Agency & Division Name;**
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the

Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title  
 State Agency Name  
 Address  
 Email Address  
 Telephone # Number  
 FAX # Number

The Contractor:

Contractor Contact Name & Title  
 Contractor Name  
 Address  
 Email Address  
 Telephone # Number  
 FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all

conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment **Reference**, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current,

written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position,

time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that

the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.



The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

#### **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to **Solicitation Number** (Attachment **Reference**) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

**Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)**

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**STATE AGENCY NAME:**

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**NAME & TITLE**

**DATE**

ATTACHMENT **REFERENCE****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

## FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

Procurement professionals should complete text fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated and with conforming font and color.

### SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

<i>Agency Tracking #</i>	a unique number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<i>Funding</i>	amounts by fiscal year & funding source and with row & column totals; the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability
<i>Contractor Ownership Characteristics</i>	<p>Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.</p> <p>Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:</p> <ul style="list-style-type: none"> <li>(A) African American, a person having origins in any of the black racial groups of Africa;</li> <li>(B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;</li> <li>(C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;</li> <li>(D) Native American, a person having origins in any of the original peoples of North America.</li> </ul> <p>Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.</p> <p>Service-Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:</p> <ul style="list-style-type: none"> <li>(A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;</li> <li>(B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or</li> <li>(C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans</li> </ul>

and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Disabled Owned Businesses (DSBE): select if a business owned by persons with disabilities, which means a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and under the control of one (1) or more persons with a disability.

Small Business Enterprise (SBE): select if a small business, which means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Non-Minority/Disadvantaged if the contractor is not  $\geq 51\%$  owned or controlled by minority or disadvantaged persons & is not a small business

Other: select if none of the above options. There is an option to provide additional details here.

For additional guidance, please visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

## PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, “Place of Incorporation or Organization: **Location.**”

### A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS (“Scope”)

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

It is the contracting state agency’s responsibility to adequately draft a Scope, and oversight examiners will rely on the contracting state agency head’s signature on the contract document as certification and assurance that the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

#### Option: Definitions

Remove Contract Section A.2. Definitions if not needed. Any defined term should be capitalized and used consistently throughout the Contract.

#### Option: MyTN.gov Interface

If the Contract involves software: (1) add the following MyTN.gov Interface term to Section A. Scope; **and** (2) add the Additional Lines, Items, or Options contract term to Section E.#. Special Terms and Conditions

**A.#.** MyTN.gov Interface.

- a. The State may require the software developed or provided by the Contractor under this Contract to interface with the State's customer-facing portal, MyTN.gov. This may occur at any time during the Term of the Contract. If so, the Contractor may have to comply with one, or more, of the following requirements:
  - (1) All web applications must be Responsive. "Responsive" is an industry standard term that refers to a web design that makes web pages render well on a variety of devices and window or screen sizes.
  - (2) All web applications must have the capability to use a single-sign on server utilizing the following industry standard protocols: Security Assertion Markup Language ("SAML") or minimum of OAuth 2.0.
- b. Any of the obligations in Section A.#.a that were known and required prior to Contract Effective Date will be specified herein, including necessary compensation methods and amounts.
- c. For any of the obligations in Section A.#.a that were unknown or not required at Contract Effective Date, it will be necessary to add lines, items, or options to the Contract to accommodate one or more of the new interface requirements. The State shall add these lines, items, or options in accordance with the MOU process described in Section E.#, below. If the Contractor requires additional compensation for the interface tasks, such compensation shall be negotiated and specified through this same MOU process.

**Option: Warranty when Contractor is reselling goods**

Replace the standard warranty provision with the following to require Contractor to provide a warranty of the greater of one year or to pass through the original manufacturer's warranty.

- A.#.** Warranty for Resale of Goods. For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

**Option: Warranty period that is shorter than the Term**

Replace the standard warranty provision with the following to obtain a warranty period that is shorter than the Term. The Contract shall not include a warranty period of less than one (1) year.

- A.#.** Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of: (a) **number (#) months or years** after the provision and acceptance by the State of goods or services provided by Contractor; or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

**Option: Warranty Additional Options**

The standard Warranty term may be removed or revised, with approval by CPO legal.

**Option: Acceptable Alternative to Change Orders.**

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

- #.** Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

**AND...**

- #.** Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section **#**. Remuneration for any such additional work shall be based on the applicable "contingent," payment rate(s) detailed in Section C.3 of this Contract.

**AND...**

- #.** Contingent Rates— In accordance with section **REFERENCE** of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

- i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

**SERVICE**

**AMOUNT PER HOUR**

**SERVICE DESCRIPTION**

**\$ AMOUNT**

- ii. The Contractor shall not be compensated for travel time to the primary location of service provision.

**Option: Change Orders.**

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. **At minimum, draft the solicitation document to include:** (1) appropriate RFP text permitting Change Orders within specified parameters; (2) a clear, comprehensive change order process in the *pro forma* contract's scope; and (3) clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.



**(1)** Add the following to the solicitation document after RFP Section 4.11:

Notwithstanding the above, *pro forma* Contract section **REFERENCE** provides for limited service “change orders” without a formal Contract Amendment upon the documented mutual agreement by the Parties.

**(2)** Add the following to the *pro forma* contract’s scope:

- A.#.** The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor’s proposal must specify:
    - (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
    - (2) the specific effort involved in completing the change(s);
    - (3) the expected schedule for completing the change(s);
    - (4) the maximum number of person hours required for the change(s); and
    - (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
  - b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
  - c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

**(3)** Add the following to the *pro forma* contract’s payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section **Reference**, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section **Reference**, PROVIDED THAT compensation to the Contractor for such “change order” work shall not exceed **NUMBER NOT TO EXCEED SEVEN PERCENT (Number %)** of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.#., through A.#.). If, at any point during the Term, the State determines that the cost of necessary “change order” work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
	\$ <b>Amount</b> per hour
<b>NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.</b>	

#### B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor’s signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

Procurement professionals should plan procurements and draft contracts with a Term of no longer than sixty (60) months, including extensions or renewals. Contracts requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request.

#### Option: Term of Contract

To revise the Term of Contract language to include a specific end date, replace the section with the following.

#### B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **Date** (“Effective Date”) and ending on **Date**, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

**Option: Renewal or Extension Term**

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

**B.#.** Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **number (#)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**B.#.** Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**Option: Term Renewal Additional Option**

This alternative Renewal Option provides procurement professionals with the flexibility to exercise multiple renewal options in the best interest of the State and in accordance with the Contract terms. To use, change the section designation under B. to B.1., and add the following section.

**B.#.** Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute **[insert number (#) of renewal terms and length]** renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS**

Revise Payment Terms and Conditions sections only as instructed.

**Option: Statewide Contract Estimated Liability.**

For statewide contracts with no Maximum Liability, replace C.1. with the following:

**C.1.** Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **DOLLAR AMOUNT (\$NUMBER)** ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

**Option: Price Changes Authorized for Equitable Adjustment**

**C.2.** Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for **Number (#)** days ("Firm Price Period").

- a. Price Decreases. After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

- b. **Price Increases.** After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.
- c. **Approval of Price Changes.** The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

**Option: Contracts That Detail Payment Methodology in an Appendix**

Reference any appendix with line items as applicable.

- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

**Payment Methodology**

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

**Requirement: *Pro Rata* Payments**

If temporal payment rates effect payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

- c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

**Option: Rate Escalation**

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from **Date**, through **Date**, the following rates shall apply:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
<b>Milestone</b>	<b>\$ Number</b>
<b>Service Unit</b>	<b>\$ Number each</b>
<b>Job Title /Activity</b>	<b>\$ Number per Hour /Day /etc.</b>
<b>Use &amp; Repeat Rows Above as Necessary</b>	

(2) For service performed from **Date**, through **Date**, the Contractor shall be compensated based upon the payment rates in Section **Reference (e.g., C.3.b.(1))** above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, **All Items /Medical Care** expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in **Month & Year (just before prior period end month)** and that figure published in the same month, 12-months prior, up to a maximum of **Written Number** percent (**Number%**).

**Repeat Previous Subsection for Each Subsequent Term**

#### **Option: Payment Upon Completion**

Replace sections in the Template with the following sections if the Contract specifies one, lump sum payment after completion of all work.

C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated **Written Dollar Amount (\$Number)**.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

#### **State Agency Billing Address**

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: **State Agency & Division Name**;

- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable; and
- (11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) not include Contractor's taxes which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

#### **Payment Methodology**

##### **Option: Advance Payment – Software Licenses or Maintenance and Support Agreements.**

Replace contract section C.3. with the following if the contract will result in an advance payment as a result of software licenses or maintenance and support agreements.

C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be paid in advance in accordance with this Contract.

b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
Milestone	\$ Number
Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)

### Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." **Insert any additional text restricting travel compensation.**

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

**AND** replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4. shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct or indirect costs incurred or to be incurred by the Contractor.

### Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

### Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- C.#. Retention of Final Payment. The amount of **Written Dollar Amount (\$Number)** shall be withheld by the State until **Written Number (Number)** days after final provision of goods or services under this Contract.

### Option: Contractor will accept the State's Purchasing Card ("P-Card") as a form of payment

Replace the mandatory Prerequisite Documentation provision with the following if the RFP or RFQ required the awarded Respondent to accept the P-Card as a form of payment or as necessary.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

- a. The Contractor shall complete, sign, and present to the State:

- (1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- (2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.

- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

#### D. MANDATORY TERMS AND CONDITIONS

##### Modification and Amendment

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

##### Option: Revise Termination for Convenience Time Period

Specify whether the termination is immediate, increase or decrease notice requirement days as appropriate.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

##### Option: Bilateral Termination

Replace the standard Termination for Convenience Section with the following bilateral termination Section only if the contracting agency can justify that bilateral termination is in the best interest of the State.

- D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least **thirty (30)** days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for



satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

#### **Termination for Cause**

##### **Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure**

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

#### **Nondiscrimination**

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

D.#. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the basis of any classification protected by federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

#### **Equal Opportunity**

Add the following Section only if the goods or services under the Contract are paid for with federal funds.

D.#. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

#### **Prevailing Wage Rates**

Add the following section if the Contractor will be performing work on a State highway construction project.

**D.#.** Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

#### **Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

**D.18.** Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to **NUMBER (#)**, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

#### **Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**Option: Statewide Contracts Estimated Liability**

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**Insurance Options**

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request (Risk) is required for any deviations from insurance requirements, including any request to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services,

employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as “**written amount** Dollars (\$**NUMBER AMOUNT**)” and obtain an approved Rule Exception Request (Risk). If additional insurance coverage is appropriate, add as new subsections and number accordingly.

**Option 1: Workers’ Compensation and Employer Liability Insurance – Low Risk Option**

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

**b. Workers’ Compensation and Employer Liability Insurance**

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

**Option 2: Professional Liability Insurance**

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

**D.#.**

**d. Professional Liability Insurance**

- i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:

1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
  2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
  3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase “extended reporting” or “tail coverage” for a minimum of five (5) full years from the date of the final Contract payment.
- ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$**1,000,000**) per claim and **two million** dollars (\$**2,000,000**) in the aggregate; and
  - iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (\$**3,000,000**) per claim and **three million** dollars (\$**3,000,000**) in the aggregate for medical malpractice insurance.

**Option 3: Low Risk Insurance for Independent Contractors**

**Option 3: Low Risk Insurance for Independent Contractors**

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. An approved Rule Exception Request (Risk) is required to use this option. Please consult the CPO Risk Manager if you have any questions.

**D.32. Insurance.** Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

**The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor under this**

**Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.**

**a. Automobile Liability Insurance**

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

**Option 4: Technology Professional Liability (Errors & Omissions) / Cyber Liability Insurance**

Add the following if the Contractor will have access to or be involved in the collection of confidential, privileged, or sensitive personally identifiable information to provide coverage in the event of a data breach.

**d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance**

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than **ten million dollars (\$10,000,000)** per occurrence or claim and **ten million dollars (\$10,000,000)** annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.

- 2) Such coverage shall include data breach response expenses, in an amount not less than **ten million dollars (\$10,000,000)** and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

#### **Option 5: Crime Insurance**

Add the following when adding Cyber Liability Insurance coverage to protect exposure from crimes related to data theft, breach, fraudulent impersonation, and social engineering.

#### **e. Crime Insurance**

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **one million dollars (\$1,000,000)** in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than **two hundred and fifty thousand dollars (\$250,000)**. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

#### **Option 6: Sexual Abuse and Molestation Insurance**

Add the following insurance coverage if the Contractor has duties involving minors, persons with disabilities, or senior adults. For example, include if the Contractor is involved in a child day care center, healthcare facility, or a nursing home.

#### **f. Sexual Abuse and Molestation Insurance**

- i. The Contractor shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- ii. Any sexual abuse and molestation insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per occurrence and **two million dollars (\$2,000,000)** in the aggregate.
- iii. In lieu of this coverage requirement, the Contractor may provide an Educator's Legal Liability (ELL) insurance policy endorsed to provide equivalent coverages as indicated in this provision.

**Option 7: Aviation Premises Liability Insurance and Hangerkeeper's Liability Insurance**

Add the following Aviation Premises Liability insurance coverage if the Contract involves an aircraft. Hangarkeeper's Liability Insurance should also be included to protect the aircraft while docketed in a hangar space, when applicable.

**g. Aviation Premises Liability Insurance**

- 1) The Contractor shall maintain Aviation Premises Liability Insurance, which shall include Products/Completed Operations Liability, On Airport Premises Auto Liability and War Liability for a Combined Single Limit of not less than **fifty million dollars (\$50,000,000)** per occurrence and in the annual aggregate as respects Products/Completed Operations and War Liability. The State shall be included as an additional insured on the Contractor's policy or the policy shall be endorsed to include the State as an additional insured.
- 2) The Contractor shall maintain Aviation Premises Liability Insurance written on a per occurrence basis:
  - i. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract.
  - ii. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of the Contract.

**h. Hangerkeeper's Liability Insurance**

Contractor shall maintain a limit not less than **fifteen million dollars (\$15,000,000)** per aircraft and **one hundred million dollars (\$100,000,000)** per occurrence basis.

**Major Procurement Contract Sales and Use Tax.**

Remove the "Major Procurement Contract Sales and Use" contract clause if the total contract value is under seventy-five thousand dollars (\$75,000.00).



### **HIPAA Compliance**

Contractors: The Contractor must execute a business associate agreement (“BAA”) if: (a) the contracting State Agency is a “covered entity” as defined by the Privacy Rules; and (b) the Contractor will provide services to the contracting State Agency that involve Contractor’s access to protected health information (“PHI”) as defined by the Privacy Rules.

Subcontractors: The Contractor must execute a BAA with a subcontractor if the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Contractor.

### **Annual and Final Reports**

Do NOT insert an Annual and Final Reports provision in a contract prepared using the FA Template. If an Annual and Final Reports provision is appropriate because a subrecipient relationship exists, use one of the CPO’s grant templates or models.

### **Audit Report**

Do NOT insert an Audit Report provision in a contract prepared using the FA Template. If an Audit Report provision is appropriate because a subrecipient relationship exists, use one of the CPO’s grant templates or models.

## **E. SPECIAL TERMS AND CONDITIONS**

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

### **Printing Authorization**

Add the following Section as appropriate.

**E.#.** Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

### **State Ownership of Goods**

Add the following Section as appropriate.

**E.#.** State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

### **Additional Lines, Items, or Options**

Add the following Section as appropriate.

**E.#.** Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add **lines, items, or options** that are needed and within the Scope but were not included in the original Contract. Such **lines, items, or options** will be added to the Contract through a Memorandum of Understanding (“MOU”), not an amendment.

- a. After the Contractor receives a written request to add **lines, items, or options**, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
  - (1) The effect, if any, of adding the **lines, items, or options** on the other **goods or services** required under the Contract;
  - (2) Any pricing related to the new lines, items, or options;
  - (3) The expected effective date for the availability of the new **lines, items, or options**; **and**
  - (4) **Any additional information requested by the State.**
- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after a MOU has been executed shall the Contractor **perform or deliver the new lines, items, or options.**

#### **Intellectual Property Indemnity**

This Section shall be used for all contracts involving computers, software, or technology related goods or services. Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

##### **Option 1**

**E.#.** Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

##### **Option 2**

**E.#.** Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be

responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, shall: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The forgoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor.

#### **Software License Warranty**

Add the following if the Contract involves software.

**E.#.** Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

#### **Software Support and Maintenance Warranty**

Add the following if the Contract involves software.

**E.#.** Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

#### **Extraneous Terms and Conditions**

Add the following term **only after** consulting with the Central Procurement Office's Legal Team and obtaining Central Procurement Office approval.

**E.#.** Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services

under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

#### **Transfer of Ownership of Custom Software Developed for the State**

This section should only be added in the event the State wishes to have complete ownership of customized software and perpetual rights to use and maintain any underlining associated pre-existing software. This section shall only be used with the permission of CPO.

The terms of any license Contractor grants the State should be included in Section A of the *pro forma* contract.

#### **E.#. Transfer of Ownership of Custom Software Developed for the State.**

##### **a. Definitions.**

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

##### **b. Rights and Title to the Software**

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed

Application Software to be installed and function as intended and as set forth in this Contract, to the State.

- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

### **Contractor Hosted Services Requirements and Confidential Data Options**

#### General Instructions:

If the contract will allow a Contractor or Subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

#### Section E.#.a: Confidential State Data

If the Contractor or Subcontractor will host data that is deemed confidential by State or Federal statute or regulation, or process data per the payment card industry (Confidential State Data), including data in transit, include Section E.#.a. If there is any type of Confidential State Data, also include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

#### Section E.#.b and c. Minimum Requirements and Comptroller Audit Requirements

Include Section E.#.b as minimum Strategic Technology Solutions (STS) requirements and Section E.#.c as minimum Comptroller audit requirements for all contracts where the Contractor or any Subcontractors will host State services or State data in the cloud (e.g., SaaS, IaaS, PaaS).

### Section E.#.e: ACFR or Single Audit Requirements

Add Section E.#.e as an additional Comptroller audit requirement, if the Contractor or Subcontractor will host services that store or process State financial or other data that (1) is used for reporting through the State's Annual Comprehensive Financial Report (ACFR) or (2) is used for demonstrating compliance with the requirements of Title 2, Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The Contractor must provide to the State a System and Organization Controls (SOC) 1 Type II or SOC 2 Type II audit report annually. The Contractor must also verify that all Subcontractors, including data center vendors, successfully complete and provide to the State an annual SOC Type II audit report. Additionally, the State should consider obtaining and reviewing the latest available SOC report for the Contractor and Subcontractor prior to the awarding of the Contract. This requirement should be added to the solicitation Technical Response requirements.

If Section E.#.e, ACFR or Single Audit Requirements is included, remove Section E.#.a.3 unless the contract will involve CJIS data or FTI data, which requires replacing E.#.a.3 as described in the options below. In this case, both a SOC Type II audit report and FEDRAMP authorization are required.

Please direct any questions regarding these requirements to STS, Security Area, or the Comptroller's Office, Office of Management Services. Direct any questions regarding the types of Confidential State Data to STS, Security Area.

#### **Criminal Justice Information Services ("CJIS") Data**

The contracting state agency must obtain prior approval from the Tennessee Bureau of Investigation ("TBI") before contracting for external hosting of CJIS data.

#### **Health Insurance Portability and Accountability Act ("HIPAA") Data**

Keep all language in E.#.a, and do the following:

Contractor must enter into a Business Associate Agreement (BAA) with the State. Therefore, include as a contract attachment a BAA agreement. Please visit the following website link, available on TEAM TN, for the ["HIPAA Business Associate Agreement Example."](#)

### **General Requirements**

<p><b>E.#.</b> Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <ol style="list-style-type: none"> <li>(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</li> <li>(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.</li> <li>(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service</li> </ol>
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organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:  
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. **Comptroller Audit Requirements**

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:



- i. Recovery Point Objective (“RPO”). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**
  - ii. Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[NUMBER OF HOURS/MINUTES]**
- (2) The Contractor **and the Subcontractor(s)** shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

#### **Option: Minimum Requirements**

Delete and Replace the standard (b)(1), referring to a URL, if the State’s Enterprise Information Security Policy will be included as a Contract Attachment.

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies. The State’s Enterprise Information Security Policies document is attached to this Contract at Attachment **Reference**.

#### **Option: ACFR or Single Audit Requirements**

If the contract will involve applications that store or process State financial or other data that is used for reporting through the State’s Annual Comprehensive Financial Report (ACFR) or for demonstrating compliance with Uniform Guidance, include Section E.#.e.

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor’s and Subcontractor’s annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the

audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.

**Option: Federal Risk and Authorization Management Program ("FedRAMP")**

If the contract will involve CJIS data or FTI data include all of the General Requirements above, except replace section E.#.a.(3) with the following and add each additional requirement as applicable.

- (3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request. No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

**Option: Federal Tax Information ("FTI") Data**

If the contract will contain FTI data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above. Also include the FTI attachment contained elsewhere in this FA Template.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

**Option: Centers for Medicare and Medicaid Services ("CMS") Data**

As applicable, if the contract will involve CMS data, also add the following sentence to the optional section E.#.a.:

Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls.

### **Option: Payment Card Industry ("PCI") Data**

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(5):

(5) Contractor shall be certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.

### **Reimbursement**

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

**E.#.** Reimbursement. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the **State Agency Head's Title** to procure by non-competitive procurement as a condition for reimbursement.

### **Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act**

Add the following section only if the Grantee will have access to personally identifiable student information or student information that is confidential pursuant to federal or state law.

**E. #.** Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is

defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

### **State Furnished Property**

Add the following Section as appropriate.

- E.#.** State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

### **Work Papers Subject to Review**

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

- E.#.** Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

### **Prohibited Advertising or Marketing**

Add the following Section as appropriate.

- E.#.** Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

### **Public Accountability**

Add the following Section as appropriate.

- E.#.** Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

#### **Environmental Tobacco Smoke**

Add the following Section as appropriate.

- E.#.** Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

#### **Prison Rape Elimination Act (PREA)**

Add the following Section as appropriate.

- E.#.** Prison Rape Elimination Act (PREA). The Contractor must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.

#### **Lobbying**

Add the following Section if the contract will be funded in whole or in part by federal funds.

- E.#.** Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

#### **Contractor Commitment to Diversity**

Revise or remove the Contractor Commitment to Diversity section as appropriate.

#### **Clean Air Act and Federal Water Pollution Control Act**

To the extent applicable, add the following section if the Contractor is receiving a federal award in excess of \$150,000.

- E. #. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the [insert federal awarding agency] and the Region 4 Office of the Environmental Protection Agency.

#### **Performance Bond**

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. For agency term contracts, choose option #1 or option #2. For statewide contracts that do not involve awards to multiple contractors, choose option #3 or option #4. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

#### **Option 1**

- E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Maximum Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

**Option 2—Insert the term below only after obtaining an approved Rule Exception Request.**

**E. #.** Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in an amount of one hundred percent (100%) of the Maximum Liability, **Written Dollar Amount (\$Number)** covering each subsequent year of the Term, including any renewals or extensions. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

**Option 3**

**E. #.** Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

**Option 4—Insert the term below only after obtaining an approved Rule Exception Request.**

**E. #.** Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a



new performance bond in the amount of Written Dollar Amount (\$Number) covering each subsequent year of the Term, including any renewals or extensions of the Contract. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

### Payment Bond

Tenn. Code Ann. § 12-4-201 requires a payment bond for all public works projects in excess of one hundred thousand dollars (\$100,000). Insert option #1 for agency term contracts; insert option #2 for statewide contracts that do not involve awards to multiple contractors. If unsure whether a payment bond is appropriate, contact the CPO Risk Manager.

### Option 1

**E.#.** Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Maximum Liability Written Dollar Amount (\$ **Number**). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

### Option 2

**E.#.** Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Estimated Liability **Written Dollar Amount** (\$ **Number**). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.



Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

#### **Option: Liquidated Damages**

The incorporation of the *pro forma* Liquidated Damages language below will require an approved Liquidated Damages Request. Deviations from this language shall be on a case-by-case basis and shall require an approved Rule Exception Request. In order to be enforceable, any liquidated damages amount must be a reasonable estimate of potential damages. If unsure whether the Section is appropriate, consult the CPO legal team.

**E.#.** Liquidated Damages. If <insert description of event giving rise to liquidated damages> occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment Reference and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

#### **Option: Liquidated Damages – HCFA**

The incorporation of the *pro forma* Liquidated Damages language below will require an approved Liquidated Damages Request. The below language may only be utilized by the Division of Health Care Finance & Administration (HCFA) and does not require an approved Rule Exception Request.

Add the following section to the *pro forma* contract Scope:

**A.#.** Control Memorandum Process.

- a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or

timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.

- b. A CM may include one (1) or more of the five (5) components of the CM process described below:
  - (1) On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
  - (2) Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
  - (3) Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.
  - (4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
  - (5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E. #., including Liquidated Damages as listed in Contract Attachment Reference, a corrective action plan, and/or termination of the Contract.
- d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM

which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within ten (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

**AND** add the following section to section E. Special Terms and Conditions:

**E.# Liquidated Damages.**

In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment **Reference** of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.#. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment **Reference** and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

**AND** add the following Contract Attachment, Liquidated Damages:

**ATTACHMENT REFERENCE****LIQUIDATED DAMAGES**

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at HCFA's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from HCFA and may continue until such time as the HCFA Deputy Commissioner, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount HCFA is to pay to Contractor in a given payment, HCFA shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by HCFA, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the HCFA Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar days of receipt of the notice from HCFA containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

### **Partial Takeover**

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E.#.** Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

### **Unencumbered Personnel**

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E.#.** Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

### **Disclosure of Personally Identifiable Information**

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E#** Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any

threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

#### **Federal Funding Accountability and Transparency Act**

Add the following Section if the contract will be funded in whole or part by federal funds anticipated to equal or exceed \$30,000.

**E.#.** Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
  - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and



- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

#### **Drug-Free Workplace.**

Add the following Section as appropriate:

- E. #.** **Drug-Free Workplace.** The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

#### **Statewide Contract – CPO use Only**

Add the following Section if the contract will establish a Statewide Contract.

- E. #.** **Statewide Contract.** This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):
- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
  - b. Tennessee local governmental agencies;
  - c. members of the University of Tennessee or Tennessee Board of Regents systems;
  - d. any private nonprofit institution of higher education chartered in Tennessee; and,
  - e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

#### **Statewide Contract Reports – CPO use Only**

Add the following Section if the contract will establish a Statewide Contract and modify as needed to request reports from the Contractor.

- E. #.** **Statewide Contract Reports.** All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

**Quarterly Reports:** Contractor(s) will submit quarterly reports to the Contract Administrator no later than **ten (10)** days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than **January 10th**). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by Tennessee State Agencies and Authorized Users. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. **Edison contract number**
2. **Contract line item number**
3. **Invoice date**



4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency or Authorized User
11. Identity of purchaser: State entity or non-State entity
12. State Agency location
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

#### Insurance of the State of Tennessee

Only use with prior approval of the CPO Risk Manager. This provision should only be used in the event the Contractor has requested the State's proof of self-insurance as part of the Contract.

**E.#.** State Insurance Program. The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice, and workers' compensation.

- a. The limits for general liability, professional malpractice, and automobile liability are three hundred thousand dollars (\$300,000) per person and one million dollars (\$1,000,000) per occurrence.
- b. The limits of liability under workers' compensation are those set forth in Tenn. Code Ann. § 50-6-101 et seq.

Copies of the statutes that authorize actions against the State of Tennessee, establish the State's limit of liability, and authorize self-insurance through the Risk Management Fund, are set forth in Tenn. Code Ann. § 9-8-101 et seq.

Persons wishing to file a claim for damages against the State of Tennessee arising from an act or omission of the State or its employees should file a claim with the State Treasury Department, Division of Risk Management and Claims Administration, 15<sup>th</sup> Floor, Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee 37243-0202. A copy of the State of Tennessee's Certificate of Self-Insurance may be obtained at [http://treasury.tn.gov/risk/PDFs/Certificate\\_of\\_Self\\_Insurance.pdf](http://treasury.tn.gov/risk/PDFs/Certificate_of_Self_Insurance.pdf) or is available upon request.

#### Protection of Federal Tax Information

Add one of the following options below **as a separate attachment** to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact your agency's disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to hard copies of FTI. Use Option #2 when the Contractor may have access to electronic forms of FTI.

## Option 1

## ATTACHMENT REFERENCE

### FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

### CONTRACT LANGUAGE FOR GENERAL SERVICES

#### I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.

- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

## II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to

any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION**

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

## **Option 2**

### **ATTACHMENT REFERENCE**

## **FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION**

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

### **CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES**

#### **I. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (11) (Include any additional safeguards that may be appropriate.)

## II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see

Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

#### Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

#### Option 1

<b>E.#</b>	<u>Survival</u> . The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
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#### Option 2

<b>E.#</b>	<u>Survival</u> . The terms, provisions, representations, and warranties contained in Sections <b>&lt;list numbered Sections&gt;</b> of this Contract shall survive the completion of performance, termination or expiration of this Contract.
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#### Liens, Encumbrances, and Title

Add the following section as appropriate.

<b>E.#.</b>	<u>Liens, Encumbrances, and Title</u> . The Contractor owns and has good and marketable title to, and legal ownership of the goods, free and clear of any and all liens, security interests, pledges, mortgages, charges, limitations, claims, restrictions, rights of first refusal, rights of first offer, rights of first negotiation or other encumbrances of any kind or nature (collectively, "Encumbrances"). Upon delivery, without exception, the State will acquire from the Contractor legal and beneficial ownership of, good and marketable title to, and all rights to the goods to be sold to the State by the Contractor, free and clear of all Encumbrances. The Contractor shall, within ten (10) days after delivery deliver to the State if required by applicable law to establish or show evidence of
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ownership, any and all documents or certificates required to establish or show evidence of the State's ownership in the goods.

### Procurement of Recovered Materials

#### **E.#.** Procurement of Recovered Materials.

- a. In the Performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive
- c. Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- d. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### Access to Records

#### **E.#.** Access to Records.

- a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In Compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit the audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

### Use of DHS Logo

**E.#.** Use of DHS Logo. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

### Compliance with Federal Law, Regulations, and Executive Orders

**E.#.** Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

### No Obligation by Federal Government

**E.#.** No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.



## Compliance with The False Claims Act

**E.#.** Compliance with The False Claims Act. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

## Equal Employment Opportunity

**E.#.** Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Compliance with Contract Work Hours and Safety Standards Act**

##### **E.#. Compliance with Contract Work Hours and Safety Standards Act.**

- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia

or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- c. Withholding for unpaid wages and liquidated damages. The **(write in the name of the Federal agency or the loan or grant recipient)** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Add the following Section as appropriate. Federal law prohibits the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Use of this term is required when federal funds are involved pursuant to 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

a.

#### **Domestic Preference for Procurements.**

Add the following section as appropriate or when required by federal funding source. See 2 C.F.R. Part 200, Appendix II, § L (citing [2 C.F.R. § 200.322](#)).

- E. #.** Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Grantee should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **Tennessee Department of Mental Health and Substance Abuse Services**

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Sections as appropriate:

- E. #.** Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and

workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

**E. #.** Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.

**E. #.** Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

**E. #.** Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:

- a. to provide inpatient hospital or inpatient community mental health services;
- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
- d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit entity;

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| <ul style="list-style-type: none"> <li>f.</li> <li>g.</li> </ul> | <p>to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or</p> <p>to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.</p> |
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**License.**

If the contract will involve the State granting a license, e.g., use of the State of TN registered trademark, add the following Section as appropriate:

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|--|---|
| <p><b>E.#.</b></p> <ul style="list-style-type: none"> <li>a.</li> <li>i.</li> <li>ii.</li> <li>b.</li> <li>c.</li> <li>d.</li> <li>e.</li> <li>f.</li> <li>g.</li> </ul> | <p><u>License</u>. State hereby grants to Contractor the non-exclusive, non-transferable license, privilege and authority to use the Property in connection with the project as approved, set out in this Contract <b>at Section A/Attachment Reference</b> all other rights being reserved to State for the Term of this contract as provided below.</p> <p>Property. The “Property” licensed <b>[Insert word portion of mark, if any]</b> mark:</p> <p style="text-align: center;"><b>[Insert picture of mark]</b></p> <p>Exclusivity. None.</p> <p>Territory. Worldwide.</p> <p><u>Term</u>. Contractor shall begin to use the Property as set out in <b>Contract Section A/Attachment Reference</b> and shall cease upon termination of the Contract unless otherwise agreed to herein.</p> <p><u>Use Limitations and Collateral Materials</u>. The Property may be used on signs, promotional materials, marketing materials, Contractor’s visitor website, and/or as otherwise set out in <b>Contract [insert Contract #], Section A/Attachment Reference</b>. The License also includes the right to create and use promotional, advertising and packing material in connection with marketing of the services. In advertising and promoting with use of the Property, Contractor shall seek prior approval as set out in this Section. The Contractor does not have any rights to use the Property on any consumer products or merchandise rights.</p> <p><u>Use of Signage and Other Materials</u>. Upon expiration of this License, Contractor shall cease use of the Property on current materials. If this License is terminated earlier than contemplated by this Contract, Contractor and State shall negotiate in good faith the wind up of the License.</p> <p><u>Sub-licensing</u>. Sub-licensing is not allowed.</p> <p><u>Approvals</u>. All use of the Property shall require State’s prior written approval. Failure to obtain approvals at all stages shall be cause for termination of Contractor’s use of the Property, only, and not the remainder of the Contract unless failure to use the Property results in a material breach.</p> <p><u>Intellectual Property Notices</u>. The Property shall always be displayed with the “®” symbol and the following notice shall appear, where space permits, on all marketing or collateral materials bearing the Property:</p> |
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[Insert word portion of Mark, if any] is a registered trademark and is used under license to the Contractor.

- h. Exclusive Property of State. The Property is and shall remain the exclusive property of State and all rights arising from the use of the Property, shall inure to State. Contractor acknowledges that it does not now have and in the future will not assert any right, title or interest of any kind or nature whatsoever in or to the Property nor will it change or contest any of State's rights therein.
- i. Royalty Rate. This License shall be royalty free.

## SIGNATURES

Draft the Contract so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.

## FEE FOR GOODS OR SERVICES CONTRACT TEMPLATE (FA)

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This template prescribes the format and content for contracts involving the purchase of goods or services from an individual, business, or non-profit. This contract template requires the expenditure of State funds.

Procurement professionals shall adhere to this template with revisions only as instructions permit. Changes to this template require a Rule Exception as set forth in Tenn. Comp. R. & Regs. 0690-03-01-.17 and the *Procurement Procedures Manual of the Central Procurement Office*.

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Procurement professionals shall complete text fields and follow, replace, or otherwise address red instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated with appropriate font and color. The standard FA Template begins on the following page. Additional instructions, considerations, and options follow the standard FA Template.

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Page 2



**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**STATE AGENCY NAME**  
**AND**  
**CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, **State Agency Name** ("State") and **Contractor Legal Entity Name** ("Contractor"), is for the provision of **Scope of Goods or Services Caption**, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

**A. SCOPE:**

A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:  
a.

A.#. **Specify the goods, services, deliverables, technical specifications, timelines, and delivery requirements that the Contractor must provide and meet (sufficient detail is required to ensure contractor accountability and definitive results).**

A.#. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.#. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on **DATE** ("Effective Date") and extend for a period of **number (#) months** after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
<b>Milestone</b>	<b>\$ Number</b>
<b>Unit</b>	<b>\$ Number each</b>
<b>Job Title /Activity</b>	<b>\$ Number per Hour /Day /etc.</b>
<b>Use &amp; Repeat Rows Above as Necessary</b>	

**Add Contingently Required Subsections as Appropriate (refer to instructions for details)**

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

**State Agency Billing Address**

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

(1) Invoice number (assigned by the Contractor);

- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: **State Agency & Division Name;**
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the

Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title  
 State Agency Name  
 Address  
 Email Address  
 Telephone # Number  
 FAX # Number

The Contractor:

Contractor Contact Name & Title  
 Contractor Name  
 Address  
 Email Address  
 Telephone # Number  
 FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all

conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment **Reference**, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current,

written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position,

time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.



- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that



the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than **one million dollars (\$1,000,000)** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

#### **E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to **Solicitation Number** (Attachment **Reference**) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

**Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)**

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**STATE AGENCY NAME:**

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**NAME & TITLE**

**DATE**

ATTACHMENT **REFERENCE****ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

If the attestation applies to more than one contract, modify the following paragraph accordingly.

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

## FA TEMPLATE INSTRUCTIONS, CONSIDERATIONS, and OPTIONS

The following pages contain additional instructions, considerations, and options. Replace or modify the Standard FA Template by including the following content as appropriate. Content included with a box around it is intended to be inserted into the standard FA Template, as appropriate.

Procurement professionals should complete text fields and follow, replace, or otherwise address **red** instructional text (e.g., **State Agency Name**, **amount**, **will/will not**) as indicated and with conforming font and color.

### SUMMARY COVER SHEET

A summary cover sheet properly completed and in accordance with the Template is required for every copy of the contracting document. Complete summary cover sheet fields as indicated within the Template and the following field descriptions.

<i>Agency Tracking #</i>	a unique number comprised of: 5-digit business unit # + unique, 5-digit # example: 31707-12345
<i>Funding</i>	amounts by fiscal year & funding source and with row & column totals; the sum of the TOTAL Contract Amount column (the grand total amount for all fiscal years & all sources of funding) MUST equal the contract maximum liability
<i>Contractor Ownership Characteristics</i>	<p>Minority Business Enterprise (MBE): select if a minority-owned business, which means a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background.</p> <p>Identify the applicable Minority if known. Minority means a person who is a citizen or lawful permanent resident of the United States and who is:</p> <ul style="list-style-type: none"> <li>(A) African American, a person having origins in any of the black racial groups of Africa;</li> <li>(B) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;</li> <li>(C) Hispanic American, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;</li> <li>(D) Native American, a person having origins in any of the original peoples of North America.</li> </ul> <p>Woman Business Enterprise (WBE): select if a woman-owned business, which means a woman-owned business that is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one or more women; or, in the case of any publicly owned business, at least fifty-one-percent (51%) of the stock of which is owned and controlled by one (1) or more women and whose management and daily business operations are under the control of one (1) or more women.</p> <p>Service-Disabled Veteran Enterprise (SDVBE): select if a Tennessee service-disabled veteran-owned business, which means a service-disabled veteran-owned business that is a continuing, independent, for profit business located in this state that performs a commercially useful function and:</p> <ul style="list-style-type: none"> <li>(A) Is at least fifty-one percent (51%) owned and controlled by one (1) or more service-disabled veterans;</li> <li>(B) In the case of a business solely owned by one (1) service-disabled veteran and such person's spouse, is at least fifty percent (50%) owned and controlled by the service-disabled veteran; or</li> <li>(C) In the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more service-disabled veterans</li> </ul>

and whose management and daily business operations are under the control of one (1) or more service-disabled veteran.

Disabled Owned Businesses (DSBE): select if a business owned by persons with disabilities, which means a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more persons with a disability; or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned and controlled by one (1) or more persons with a disability and whose management and under the control of one (1) or more persons with a disability.

Small Business Enterprise (SBE): select if a small business, which means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Non-Minority/Disadvantaged if the contractor is not  $\geq 51\%$  owned or controlled by minority or disadvantaged persons & is not a small business

Other: select if none of the above options. There is an option to provide additional details here.

For additional guidance, please visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe-/program-eligibility.html>

## PREAMBLE

Add additional information only if necessary.

In a contract with an individual, delete the Template preamble phrase, “Place of Incorporation or Organization: **Location.**”

### A. SCOPE OF SERVICES OR SPECIFICATIONS OF GOODS (“Scope”)

Do NOT include payment terms in the Scope. Define any Contractor milestones without reference to payment. Section C should address payment at milestones.

Draft the Scope to clearly, specifically, and definitively detail contractor duties, responsibilities, and associated performance requirements and describe, in detail, the Scope and deliverable requirements and all related specifications. Include a definition section, key performance indicators, or any other specifications as needed.

It is the contracting state agency’s responsibility to adequately draft a Scope, and oversight examiners will rely on the contracting state agency head’s signature on the contract document as certification and assurance that the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure contractor accountability and results.

#### Option: Definitions

Remove Contract Section A.2. Definitions if not needed. Any defined term should be capitalized and used consistently throughout the Contract.

#### Option: MyTN.gov Interface

If the Contract involves software: (1) add the following MyTN.gov Interface term to Section A. Scope; **and** (2) add the Additional Lines, Items, or Options contract term to Section E.#. Special Terms and Conditions



**A.#.** MyTN.gov Interface.

- a. The State may require the software developed or provided by the Contractor under this Contract to interface with the State's customer-facing portal, MyTN.gov. This may occur at any time during the Term of the Contract. If so, the Contractor may have to comply with one, or more, of the following requirements:
  - (1) All web applications must be Responsive. "Responsive" is an industry standard term that refers to a web design that makes web pages render well on a variety of devices and window or screen sizes.
  - (2) All web applications must have the capability to use a single-sign on server utilizing the following industry standard protocols: Security Assertion Markup Language ("SAML") or minimum of OAuth 2.0.
- b. Any of the obligations in Section A.#.a that were known and required prior to Contract Effective Date will be specified herein, including necessary compensation methods and amounts.
- c. For any of the obligations in Section A.#.a that were unknown or not required at Contract Effective Date, it will be necessary to add lines, items, or options to the Contract to accommodate one or more of the new interface requirements. The State shall add these lines, items, or options in accordance with the MOU process described in Section E.#, below. If the Contractor requires additional compensation for the interface tasks, such compensation shall be negotiated and specified through this same MOU process.

**Option: Warranty when Contractor is reselling goods**

Replace the standard warranty provision with the following to require Contractor to provide a warranty of the greater of one year or to pass through the original manufacturer's warranty.

- A.#.** Warranty for Resale of Goods. For all goods provided under this Contract, Contractor shall pass-through to the State any manufacturers' warranties. In addition, for a period of one (1) year after any receipt of any goods under this Contract, Contractor expressly warrants that all such goods are: (a) merchantable; (b) of good quality and workmanship; (c) free from defects; (d) in conformity with the intended purpose and for the particular purpose for which they were designed; and (e) in conformity with Contractor's samples, if any.

**Option: Warranty period that is shorter than the Term**

Replace the standard warranty provision with the following to obtain a warranty period that is shorter than the Term. The Contract shall not include a warranty period of less than one (1) year.

- A.#.** Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of: (a) **number (#) months or years** after the provision and acceptance by the State of goods or services provided by Contractor; or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

**Option: Warranty Additional Options**

The standard Warranty term may be removed or revised, with approval by CPO legal.

**Option: Acceptable Alternative to Change Orders.**

The RFP Contract Amendment section does not preclude the State from "locking in" payment rates for any additional work per potential contract amendments. Therefore, if deemed appropriate, add the following sections to the *pro forma* contract Scope:

- #.** Correction of Deficiencies. Any corrections of deficiencies relating to the Contract Scope of Services requirements or deliverables and any investigation necessary to determine the source of such deficiencies shall be completed by the Contractor at no cost to the State.

**AND...**

- #.** Additional Work. The State may request, at its sole discretion, additional work involving the enhancement or modification of a deliverable under the Contract Scope, provided that this Contract is amended, pursuant to section **#**. Remuneration for any such additional work shall be based on the applicable "contingent," payment rate(s) detailed in Section C.3 of this Contract.

**AND...**

- #.** Contingent Rates— In accordance with section **REFERENCE** of this Contract, The State may request and the Contractor may agree to perform additional work involving the enhancement or modification of deliverables under the Contract Scope of Services, provided that this Contract is amended to require such work.

- i. Remuneration for any such additional work shall be based on the applicable contingent, payment rate(s) detailed below and as approved by the State.

**SERVICE**

**AMOUNT PER HOUR**

**SERVICE DESCRIPTION**

**\$ AMOUNT**

- ii. The Contractor shall not be compensated for travel time to the primary location of service provision.

**Option: Change Orders.**

The incorporation of *pro forma* contract language permitting Change Orders will be stringently considered and may require oversight authority executive-level approval prior to a solicitation being approved for release.

Propose a Change Order process within a draft document only as appropriate, and provide clear justification as to why it is deemed necessary. **At minimum, draft the solicitation document to include:** (1) appropriate RFP text permitting Change Orders within specified parameters; (2) a clear, comprehensive change order process in the *pro forma* contract's scope; and (3) clear, non-conflicting payment provisions in the *pro forma* contract's payment methodology section.

**(1)** Add the following to the solicitation document after RFP Section 4.11:

Notwithstanding the above, *pro forma* Contract section **REFERENCE** provides for limited service “change orders” without a formal Contract Amendment upon the documented mutual agreement by the Parties.

**(2)** Add the following to the *pro forma* contract’s scope:

- A.#.** The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.
- a. Change Order Creation— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor’s proposal must specify:
- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
  - (2) the specific effort involved in completing the change(s);
  - (3) the expected schedule for completing the change(s);
  - (4) the maximum number of person hours required for the change(s); and
  - (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.
- The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.
- b. Change Order Performance— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. Change Order Remuneration— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

**(3)** Add the following to the *pro forma* contract’s payment methodology section:

[C.3.]x. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section **Reference**, without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section **Reference**, PROVIDED THAT compensation to the Contractor for such “change order” work shall not exceed **NUMBER NOT TO EXCEED SEVEN PERCENT (Number %)** of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.#., through A.#.). If, at any point during the Term, the State determines that the cost of necessary “change order” work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
	\$ <b>Amount</b> per hour
<b>NOTE: The Contractor shall not be compensated for travel time to the primary location of service provision.</b>	

#### B. TERM OF CONTRACT

Procurement professionals should obtain the Contractor’s signature first before submitting the Contract for state signatures or approvals. Procurement professionals shall obtain all required approvals prior to the Effective Date written in the Contract and submit it for Central Procurement Office approval no less than thirty (30) days before the Effective Date.

If a signed contract is not submitted to the Central Procurement Office at least thirty (30) days prior to the Effective Date, then the CPO may request that the Contract be resubmitted with a new Effective Date or request that the procurement professional provide a written explanation as to why the Contract was submitted less than thirty (30) days before the Effective Date. In no event shall the Contractor deliver goods or perform services prior to the Effective Date.

Procurement professionals should plan procurements and draft contracts with a Term of no longer than sixty (60) months, including extensions or renewals. Contracts requiring a Term greater than sixty (60) months shall require an approved Rule Exception Request.

#### Option: Term of Contract

To revise the Term of Contract language to include a specific end date, replace the section with the following.

#### B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on **Date** (“Effective Date”) and ending on **Date**, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

**Option: Renewal or Extension Term**

To reserve the right to renew or extend the Term, change the section designation under B. to B.1., and add either or both of the following sections.

**B.#.** Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to **number (#)** renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**B.#.** Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**Option: Term Renewal Additional Option**

This alternative Renewal Option provides procurement professionals with the flexibility to exercise multiple renewal options in the best interest of the State and in accordance with the Contract terms. To use, change the section designation under B. to B.1., and add the following section.

**B.#.** Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute **[insert number (#) of renewal terms and length]** renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS**

Revise Payment Terms and Conditions sections only as instructed.

**Option: Statewide Contract Estimated Liability.**

For statewide contracts with no Maximum Liability, replace C.1. with the following:

**C.1.** Estimated Liability. The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be **DOLLAR AMOUNT (\$NUMBER)** ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

**Option: Price Changes Authorized for Equitable Adjustment**

**C.2.** Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for **Number (#)** days ("Firm Price Period").

- a. **Price Decreases.** After the Firm Price Period, prices shall be equitably adjusted to reflect a decrease in Contractor's costs.

- b. **Price Increases.** After the Firm Price Period, Contractor may request price increases. The request shall: include copies of the new price lists or catalog that reflect a change in the Contractor's cost; not constitute an increase in profit; and apply to all of the Contractor's customers.
- c. **Approval of Price Changes.** The State may at its sole option: (1) grant the Contractor's request; (2) cancel the Contract and award it to the next apparent best evaluated Respondent; (3) cancel the Contract and reissue the solicitation; or (4) deny the Contractor's request. If approved, any price changes of less than seven percent (7%) will become effective upon the State's approval in writing. Price changes exceeding seven percent (7%) shall require a Contract amendment. The Contractor shall honor all purchase orders dated prior to the approved price change. Upon request from the State, the Contractor shall furnish the approved catalog, price schedule or price list as applicable to the State at no charge.

**Option: Contracts That Detail Payment Methodology in an Appendix**

Reference any appendix with line items as applicable.

- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment rates for goods or services contained in Contract Appendix # and as authorized by the State in a total amount as set forth in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

The reimbursement of actual costs in a fee-for-service contract is NOT recommended. If the Contract includes payment terms providing for a reimbursement of actual costs (other than travel compensation in accordance with state rates), the payment terms MUST also include provisions that describe EXACTLY how the State will audit Contractor expenditures to ensure that the State pays for actual, reasonable, necessary and allowed costs only and that such costs resulted from competitive procurements.

**Payment Methodology**

The default payment methodology used in the Template provides for unit, milestone and temporal rate payments.

**Requirement: *Pro Rata* Payments**

If temporal payment rates effect payment for service periods greater than an hour (*e.g.*, daily payment rates), add a new subsection (similar to the following example) that defines the payment period and provides for *pro rata* payments for completed periods of service less than the payment rate period.

- c. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.

**Option: Rate Escalation**

Replace paragraph C.3.b. with the following if specific rate escalation during the Term is appropriate.

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from **Date**, through **Date**, the following rates shall apply:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
<b>Milestone</b>	<b>\$ Number</b>
<b>Service Unit</b>	<b>\$ Number each</b>
<b>Job Title /Activity</b>	<b>\$ Number per Hour /Day /etc.</b>
<b>Use &amp; Repeat Rows Above as Necessary</b>	

(2) For service performed from **Date**, through **Date**, the Contractor shall be compensated based upon the payment rates in Section **Reference (e.g., C.3.b.(1))** above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, **All Items /Medical Care** expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in **Month & Year (just before prior period end month)** and that figure published in the same month, 12-months prior, up to a maximum of **Written Number** percent (**Number%**).

**Repeat Previous Subsection for Each Subsequent Term**

#### **Option: Payment Upon Completion**

Replace sections in the Template with the following sections if the Contract specifies one, lump sum payment after completion of all work.

C.3. Payment Methodology. Upon Contractor's satisfactory provision of goods or services set forth in Section A, the Contractor shall be compensated **Written Dollar Amount (\$Number)**.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only after completion of all work, described in Section A of this Contract, and present invoices no more often than monthly, with all necessary supporting documentation, to:

#### **State Agency Billing Address**

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: **State Agency & Division Name**;

- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable; and
- (11) Total amount due for delivered goods or services provided (as stipulated in Section C.3. above).

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) not include Contractor's taxes which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) begin the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

#### **Payment Methodology**

##### **Option: Advance Payment – Software Licenses or Maintenance and Support Agreements.**

Replace contract section C.3. with the following if the contract will result in an advance payment as a result of software licenses or maintenance and support agreements.

C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be paid in advance in accordance with this Contract.

b. The Contractor shall be compensated based upon the following payment methodology:

<b>Goods or Services Description</b>	<b>Amount</b> (per compensable increment)
<b>Milestone</b>	<b>\$ Number</b>
<b>Unit</b>	<b>\$ Number each</b>
<b>Job Title /Activity</b>	<b>\$ Number per Hour /Day /etc.</b>
<b>Use &amp; Repeat Rows Above as Necessary</b>	

Add Contingently Required Subsections as Appropriate (refer to instructions for details)



### Travel Compensation

Replace the Section with the following as appropriate (and revise the Compensation Firm Section as indicated).

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations." **Insert any additional text restricting travel compensation.**

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

**AND** replace the second sentence of the Compensation Firm Section with the following:

The payment methodology in Section C.3 and the Travel Compensation provided in Section C.4. shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct or indirect costs incurred or to be incurred by the Contractor.

### Invoice Requirements

Add clear, non-conflicting, invoice requirements to this Section as appropriate.

Revise the Section to require or permit invoices more or less often than monthly.

### Option: Retention of Final Payment

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- C.#. Retention of Final Payment. The amount of **Written Dollar Amount (\$Number)** shall be withheld by the State until **Written Number (Number)** days after final provision of goods or services under this Contract.

### Option: Contractor will accept the State's Purchasing Card ("P-Card") as a form of payment

Replace the mandatory Prerequisite Documentation provision with the following if the RFP or RFQ required the awarded Respondent to accept the P-Card as a form of payment or as necessary.

- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

- a. The Contractor shall complete, sign, and present to the State:

- (1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- (2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.

- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

#### **D. MANDATORY TERMS AND CONDITIONS**

##### **Modification and Amendment**

Add the following section if the Contract includes a Renewal Option or Term Extension provision.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.

##### **Option: Revise Termination for Convenience Time Period**

Specify whether the termination is immediate, increase or decrease notice requirement days as appropriate.

- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

##### **Option: Bilateral Termination**

Replace the standard Termination for Convenience Section with the following bilateral termination Section only if the contracting agency can justify that bilateral termination is in the best interest of the State.

- D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least **thirty (30)** days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for

satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.

#### **Termination for Cause**

##### **Option: Termination for Cause Providing for Notice of Breach and an Opportunity to Cure**

Replace the Section with either of the following as appropriate. The first option requires the State to give notice of breach and provide Contractor an opportunity to cure the condition prior to termination. The second option allows the Contractor as well as the State to declare the other Party in breach while requiring a cure period prior to termination.

D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall provide written notice to Contractor specifying the Breach Condition. If within thirty (30) days of notice, the Contractor has not cured the Breach Condition, the State may terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.

#### **Nondiscrimination**

Replace the standard nondiscrimination provision with the following ONLY if contracting with a RELIGIOUS ORGANIZATION.

D.#. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the basis of any classification protected by federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

#### **Equal Opportunity**

Add the following Section only if the goods or services under the Contract are paid for with federal funds.

D.#. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
- (2) Layoff or termination;
- (3) Rates of pay or other forms of compensation; and
- (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

#### **Prevailing Wage Rates**

Add the following section if the Contractor will be performing work on a State highway construction project.

- D.#. Prevailing Wage Rates. All State contracts for highway construction projects, which are for the purpose of building, rebuilding, locating, relocating or repairing any streets, highways or bridges, require compliance with the prevailing wage laws as provided in Tenn. Code Ann. §§ 12-4-401 – 12-4-415.

#### **Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required.

- D.18. Limitation of Contractor's Liability. The Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to **NUMBER (#)**, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death.

#### **Limitation of Liability**

If the Contractor's Limitation of Liability will vary from Tenn. Code Ann. § 12-3-701, an approved Limitation of Liability Request is required. This language is allowed only if the CPO has agreed in negotiations to use of this language.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract, unless such damages are insured by the insurance coverages required by this Contract or would have been covered had the required insurance been purchased or maintained. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**Option: Statewide Contracts Estimated Liability**

For statewide contracts with no Maximum Liability, replace D.17. and D.18. with the following:

D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

**Insurance Options**

Commercial General Liability, Workers' Compensation and Employer Liability Insurance, and Automobile Liability Insurance are included as Mandatory Terms and Conditions. An approved Rule Exception Request (Risk) is required for any deviations from insurance requirements, including any request to remove the Commercial General Liability and Workers' Compensation and Employer Liability insurance types. Automobile Insurance may be removed without an approved Rule Exception Request if vehicles will not be used to perform the Scope.

Certain situations call for adjusting the coverage requirements to provide adequate protection to the State. If the procurement involves activities that present either a higher risk (e.g., heavy machinery, frequent use of automobiles, medical industry, etc.) or a unique risk (e.g., internet-based services,

employee-committed crime, etc.), please consult with the CPO Risk Manager to determine if a deviation from the default coverage requirements is appropriate. Enter any revised coverage amounts as “**written amount** Dollars (\$**NUMBER AMOUNT**)” and obtain an approved Rule Exception Request (Risk). If additional insurance coverage is appropriate, add as new subsections and number accordingly.

**Option 1: Workers’ Compensation and Employer Liability Insurance – Low Risk Option**

Consider the risk of each contract (value, type of services or work provided). Option 1 should only be used where the risk of the Contractor Employee injury is low. If an agency has any questions concerning the risks involved please contact the CPO Risk Manager.

**b. Workers’ Compensation and Employer Liability Insurance**

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers’ compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

**Option 2: Professional Liability Insurance**

Add the following if the Contract involves professional service providers, e.g., architects, engineers, consultants, counselors, medical professionals, attorneys, accountants.

**D.#.**

**d. Professional Liability Insurance**

- i. Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:

1. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of the Contract or the beginning of Contract work or provision of goods and services;
  2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
  3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase “extended reporting” or “tail coverage” for a minimum of five (5) full years from the date of the final Contract payment.
- ii. Any professional liability insurance policy shall have a limit not less than **one million** dollars (\$**1,000,000**) per claim and **two million** dollars (\$**2,000,000**) in the aggregate; and
  - iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than **three million** (\$**3,000,000**) per claim and **three million** dollars (\$**3,000,000**) in the aggregate for medical malpractice insurance.

**Option 3: Low Risk Insurance for Independent Contractors**

**Option 3: Low Risk Insurance for Independent Contractors**

Certain situations may arise where the Contract is with an Independent Contractor or otherwise presents a low risk procurement where standard Template Insurance requirements may not be appropriate but where best practices would still dictate some level of insurance verification. This option, if approved by CPO, replaces the D.32. Insurance provision in its entirety. An approved Rule Exception Request (Risk) is required to use this option. Please consult the CPO Risk Manager if you have any questions.

**D.32. Insurance.** Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. The State reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State.

**The insurance obligations under this Contract shall be: 1—all the insurance coverage and policy limits carried by or available to the Contractor; or 2—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds or policies in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor under this**

**Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverage(s) and policy limits.**

**a. Automobile Liability Insurance**

1) In the event that the Contractor (1) owns, leases, or otherwise operates an automotive vehicle and (2) intends to use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State proof of the Contractor's automobile liability insurance policy. Such automobile liability insurance policy shall maintain limits not less than the minimum liability limits established by the relevant authority under which said vehicle is licensed. Such verification is required whether or not the State intends to reimburse the Contractor for mileage.

2) If the Contractor DOES NOT (1) own, lease, or otherwise operate an automotive vehicle or (2) WILL NOT operate or otherwise employ a personal vehicle in furtherance of their contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract, then the Contractor shall provide to the State a letter signed by the Contractor certifying as to the above. In the event that such situation changes over the course of the Term of this Contract as described in provision 1) above, the Contractor shall inform the State and provide proof of automobile liability insurance before such time as the Contractor shall use such vehicle in furtherance of their Contractual duties or for regular or periodic transportation onto State property for the purposes of performing the Contractor's duties under the Terms of this Contract.

**Option 4: Technology Professional Liability (Errors & Omissions) / Cyber Liability Insurance**

Add the following if the Contractor will have access to or be involved in the collection of confidential, privileged, or sensitive personally identifiable information to provide coverage in the event of a data breach.

**d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance**

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than **ten million dollars (\$10,000,000)** per occurrence or claim and **ten million dollars (\$10,000,000)** annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.



- 2) Such coverage shall include data breach response expenses, in an amount not less than **ten million dollars (\$10,000,000)** and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

#### **Option 5: Crime Insurance**

Add the following when adding Cyber Liability Insurance coverage to protect exposure from crimes related to data theft, breach, fraudulent impersonation, and social engineering.

#### **e. Crime Insurance**

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
- 2) Any crime insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per claim and **one million dollars (\$1,000,000)** in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than **two hundred and fifty thousand dollars (\$250,000)**. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

#### **Option 6: Sexual Abuse and Molestation Insurance**

Add the following insurance coverage if the Contractor has duties involving minors, persons with disabilities, or senior adults. For example, include if the Contractor is involved in a child day care center, healthcare facility, or a nursing home.

#### **f. Sexual Abuse and Molestation Insurance**

- i. The Contractor shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- ii. Any sexual abuse and molestation insurance policy shall have a limit not less than **one million dollars (\$1,000,000)** per occurrence and **two million dollars (\$2,000,000)** in the aggregate.
- iii. In lieu of this coverage requirement, the Contractor may provide an Educator's Legal Liability (ELL) insurance policy endorsed to provide equivalent coverages as indicated in this provision.

**Option 7: Aviation Premises Liability Insurance and Hangerkeeper's Liability Insurance**

Add the following Aviation Premises Liability insurance coverage if the Contract involves an aircraft. Hangarkeeper's Liability Insurance should also be included to protect the aircraft while docketed in a hangar space, when applicable.

**g. Aviation Premises Liability Insurance**

- 1) The Contractor shall maintain Aviation Premises Liability Insurance, which shall include Products/Completed Operations Liability, On Airport Premises Auto Liability and War Liability for a Combined Single Limit of not less than **fifty million dollars (\$50,000,000)** per occurrence and in the annual aggregate as respects Products/Completed Operations and War Liability. The State shall be included as an additional insured on the Contractor's policy or the policy shall be endorsed to include the State as an additional insured.
- 2) The Contractor shall maintain Aviation Premises Liability Insurance written on a per occurrence basis:
  - i. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract.
  - ii. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of the Contract.

**h. Hangerkeeper's Liability Insurance**

Contractor shall maintain a limit not less than **fifteen million dollars (\$15,000,000)** per aircraft and **one hundred million dollars (\$100,000,000)** per occurrence basis.

**Major Procurement Contract Sales and Use Tax.**

Remove the "Major Procurement Contract Sales and Use" contract clause if the total contract value is under seventy-five thousand dollars (\$75,000.00).

### **HIPAA Compliance**

Contractors: The Contractor must execute a business associate agreement (“BAA”) if: (a) the contracting State Agency is a “covered entity” as defined by the Privacy Rules; and (b) the Contractor will provide services to the contracting State Agency that involve Contractor’s access to protected health information (“PHI”) as defined by the Privacy Rules.

Subcontractors: The Contractor must execute a BAA with a subcontractor if the subcontractor creates, receives, maintains, or transmits PHI on behalf of the Contractor.

### **Annual and Final Reports**

Do NOT insert an Annual and Final Reports provision in a contract prepared using the FA Template. If an Annual and Final Reports provision is appropriate because a subrecipient relationship exists, use one of the CPO’s grant templates or models.

### **Audit Report**

Do NOT insert an Audit Report provision in a contract prepared using the FA Template. If an Audit Report provision is appropriate because a subrecipient relationship exists, use one of the CPO’s grant templates or models.

## **E. SPECIAL TERMS AND CONDITIONS**

Add the following sections as appropriate and in the order below. An approved Rule Exception Request is required to add any Section E terms that are not among the options below. Should any of these special terms and conditions conflict with the mandatory terms and conditions in Section D of this Contract, the mandatory terms and conditions shall control.

### **Printing Authorization**

Add the following Section as appropriate.

**E.#.** Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 12-7-101, *et. seq.*, shall be printed pursuant to this Contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann. § 12-7-103 (d).

### **State Ownership of Goods**

Add the following Section as appropriate.

**E.#.** State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

### **Additional Lines, Items, or Options**

Add the following Section as appropriate.

**E.#.** Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add **lines, items, or options** that are needed and within the Scope but were not included in the original Contract. Such **lines, items, or options** will be added to the Contract through a Memorandum of Understanding (“MOU”), not an amendment.

- a. After the Contractor receives a written request to add **lines, items, or options**, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
  - (1) The effect, if any, of adding the **lines, items, or options** on the other **goods or services** required under the Contract;
  - (2) Any pricing related to the new lines, items, or options;
  - (3) The expected effective date for the availability of the new **lines, items, or options**; **and**
  - (4) **Any additional information requested by the State.**
- b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d. Only after a MOU has been executed shall the Contractor **perform or deliver the new lines, items, or options.**

#### **Intellectual Property Indemnity**

This Section shall be used for all contracts involving computers, software, or technology related goods or services. Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

##### **Option 1**

**E.#.** Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

##### **Option 2**

**E.#.** Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be

responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

In addition to the above indemnity, if the State's use of any deliverable, or any portion thereof, provided under this Contract, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, the Contractor, at its expense, shall: (x) procure for the State the continued use of such deliverable; (y) replace such deliverable with a non-infringing counterpart; or (z) modify such deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by the Contractor, the replacement or modified deliverable must be capable of performing substantially the same function. Notwithstanding the foregoing, the State retains the right to terminate the Contract in accordance with Section D.6 hereunder in the event of such infringement or unauthorized use, and any such exercise of these allowable options by Contractor shall not relieve Contractor of its indemnity obligations under this Section.

The forgoing indemnity does not apply to the extent that the infringement arises from the State's: (i) use of the deliverable not in accordance with instructions, documentations, or specifications ("Misuse"); (ii) alteration, modification or revision of the Deliverables not expressly authorized by the Contractor ("Alteration"); (iii) failure to use or implement corrections or enhancements to the Deliverables made available by the Contractor to the State at no additional cost to the State, except where such failure to use or implement corrections or enhancements is a result of State's termination in accordance with the preceding paragraph; or (iv) combination of the Deliverables with materials not provided, specified, or approved by the Contractor.

#### **Software License Warranty**

Add the following if the Contract involves software.

**E.#.** Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

#### **Software Support and Maintenance Warranty**

Add the following if the Contract involves software.

**E.#.** Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

#### **Extraneous Terms and Conditions**

Add the following term **only after** consulting with the Central Procurement Office's Legal Team and obtaining Central Procurement Office approval.

**E.#.** Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services

under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

### **Transfer of Ownership of Custom Software Developed for the State**

This section should only be added in the event the State wishes to have complete ownership of customized software and perpetual rights to use and maintain any underlining associated pre-existing software. This section shall only be used with the permission of CPO.

The terms of any license Contractor grants the State should be included in Section A of the *pro forma* contract.

#### **E.#. Transfer of Ownership of Custom Software Developed for the State.**

##### **a. Definitions.**

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

##### **b. Rights and Title to the Software**

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed

Application Software to be installed and function as intended and as set forth in this Contract, to the State.

- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
- (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

## **Contractor Hosted Services Requirements and Confidential Data Options**

### General Instructions:

If the contract will allow a Contractor or Subcontractor to host State services or State data in the cloud (e.g., Software as a Service (SaaS), Infrastructure as a Service (IaaS), Platform as a Service (PaaS)), then follow the instructions as described in the various options below. Include all applicable sections, renumbering as may be appropriate.

### Section E.#.a: Confidential State Data

If the Contractor or Subcontractor will host data that is deemed confidential by State or Federal statute or regulation, or process data per the payment card industry (Confidential State Data), including data in transit, include Section E.#.a. If there is any type of Confidential State Data, also include the standard language covering Disclosure of Personally Identifiable Information (PII) from the Section E options provided in the FA Template.

### Section E.#.b and c. Minimum Requirements and Comptroller Audit Requirements

Include Section E.#.b as minimum Strategic Technology Solutions (STS) requirements and Section E.#.c as minimum Comptroller audit requirements for all contracts where the Contractor or any Subcontractors will host State services or State data in the cloud (e.g., SaaS, IaaS, PaaS).

### Section E.#.e: ACFR or Single Audit Requirements

Add Section E.#.e as an additional Comptroller audit requirement, if the Contractor or Subcontractor will host services that store or process State financial or other data that (1) is used for reporting through the State's Annual Comprehensive Financial Report (ACFR) or (2) is used for demonstrating compliance with the requirements of Title 2, Code of Federal Regulations, Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance). The Contractor must provide to the State a System and Organization Controls (SOC) 1 Type II or SOC 2 Type II audit report annually. The Contractor must also verify that all Subcontractors, including data center vendors, successfully complete and provide to the State an annual SOC Type II audit report. Additionally, the State should consider obtaining and reviewing the latest available SOC report for the Contractor and Subcontractor prior to the awarding of the Contract. This requirement should be added to the solicitation Technical Response requirements.

If Section E.#.e, ACFR or Single Audit Requirements is included, remove Section E.#.a.3 unless the contract will involve CJIS data or FTI data, which requires replacing E.#.a.3 as described in the options below. In this case, both a SOC Type II audit report and FEDRAMP authorization are required.

Please direct any questions regarding these requirements to STS, Security Area, or the Comptroller's Office, Office of Management Services. Direct any questions regarding the types of Confidential State Data to STS, Security Area.

#### **Criminal Justice Information Services ("CJIS") Data**

The contracting state agency must obtain prior approval from the Tennessee Bureau of Investigation ("TBI") before contracting for external hosting of CJIS data.

#### **Health Insurance Portability and Accountability Act ("HIPAA") Data**

Keep all language in E.#.a, and do the following:

Contractor must enter into a Business Associate Agreement (BAA) with the State. Therefore, include as a contract attachment a BAA agreement. Please visit the following website link, available on TEAM TN, for the ["HIPAA Business Associate Agreement Example."](#)

### **General Requirements**

<p><b>E.#.</b> Contractor Hosted Services Confidential Data, Audit, and Other Requirements</p> <p>a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:</p> <ol style="list-style-type: none"> <li>(1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.</li> <li>(2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.</li> <li>(3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service</li> </ol>
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organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL:  
<https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.

- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. **Comptroller Audit Requirements**

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:

- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:

- i. Recovery Point Objective (“RPO”). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**
  - ii. Recovery Time Objective (“RTO”). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[NUMBER OF HOURS/MINUTES]**
- (2) The Contractor **and the Subcontractor(s)** shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A “Disaster Recovery Test” shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State’s RPO and RTO requirements. A “Data Set” is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

#### **Option: Minimum Requirements**

Delete and Replace the standard (b)(1), referring to a URL, if the State’s Enterprise Information Security Policy will be included as a Contract Attachment.

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State’s Enterprise Information Security Policies. The State’s Enterprise Information Security Policies document is attached to this Contract at Attachment **Reference**.

#### **Option: ACFR or Single Audit Requirements**

If the contract will involve applications that store or process State financial or other data that is used for reporting through the State’s Annual Comprehensive Financial Report (ACFR) or for demonstrating compliance with Uniform Guidance, include Section E.#.e.

- e. The Contractor and any Subcontractor used by the Contractor to host State data, including data center vendors, shall be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants (“AICPA”) for a System and Organization Controls for service organizations (“SOC”) Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide the State with the Contractor’s and Subcontractor’s annual audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the

audit report within 30 days after the CPA firm provides the audit report to the Contractor and Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these audits as they are included in the Maximum Liability of this Contract.

**Option: Federal Risk and Authorization Management Program ("FedRAMP")**

If the contract will involve CJIS data or FTI data include all of the General Requirements above, except replace section E.#.a.(3) with the following and add each additional requirement as applicable.

- (3) The Contractor shall maintain a Security Management Certification from the Federal Risk and Authorization Management Program ("FedRAMP"). A "Security Management Certification" shall mean written confirmation from FedRAMP that FedRAMP has assessed the Contractor's information technology Infrastructure, using a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services, and has certified that the Contractor meets FedRAMP standards. Information technology "Infrastructure" shall mean the Contractor's entire collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test, operate, monitor, manage and/or support information technology services. The Contractor shall provide proof of current certification annually and upon State request. No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

**Option: Federal Tax Information ("FTI") Data**

If the contract will contain FTI data, also add the following sentence to the optional section E.#.a.(3) (FedRAMP) language above. Also include the FTI attachment contained elsewhere in this FA Template.

Contractor shall meet all applicable requirements of the most current version of Internal Revenue Service Publication 1075.

**Option: Centers for Medicare and Medicaid Services ("CMS") Data**

As applicable, if the contract will involve CMS data, also add the following sentence to the optional section E.#.a.:

Contractor shall meet requirements of current version of Minimum Acceptable Risk Standards for Exchanges ("MARS-E") controls.

### **Option: Payment Card Industry ("PCI") Data**

If the contract will involve PCI data, include all of the General Requirements above, and add the following as section E.#.a.(5):

(5) Contractor shall be certified to host Payment Card Industry ("PCI") data in accordance with the current version of PCI DSS ("Data Security Standard"), maintained by the PCI Security Standards Council.

### **Reimbursement**

Add the following section if the contract payment terms provide for Contractor reimbursement for goods, materials, supplies, equipment, or contracted services.

**E.#.** Reimbursement. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Any goods, materials, supplies, equipment or contracted services procured by Contractor under this Contract shall be procured on a competitive basis when practicable. The Contractor shall maintain documentation supporting Contractor's request for reimbursement. In each instance where it is determined that use of a competitive procurement method was not practicable, Contractor shall seek approval of the **State Agency Head's Title** to procure by non-competitive procurement as a condition for reimbursement.

### **Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act**

Add the following section only if the Grantee will have access to personally identifiable student information or student information that is confidential pursuant to federal or state law.

**E. #.** Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract. The obligations set forth in this Section shall survive the termination of this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is

defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

### **State Furnished Property**

Add the following Section as appropriate.

- E.#.** State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

### **Work Papers Subject to Review**

Add the following Section only if the contract requires the performance of audit, accounting or financial analysis services.

- E.#.** Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

### **Prohibited Advertising or Marketing**

Add the following Section as appropriate.

- E.#.** Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

### **Public Accountability**

Add the following Section as appropriate.

- E.#.** Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

#### **Environmental Tobacco Smoke**

Add the following Section as appropriate.

- E.#.** Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

#### **Prison Rape Elimination Act (PREA)**

Add the following Section as appropriate.

- E.#.** Prison Rape Elimination Act (PREA). The Contractor must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.

#### **Lobbying**

Add the following Section if the contract will be funded in whole or in part by federal funds.

- E.#.** Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

#### **Contractor Commitment to Diversity**

Revise or remove the Contractor Commitment to Diversity section as appropriate.

#### **Clean Air Act and Federal Water Pollution Control Act**

To the extent applicable, add the following section if the Contractor is receiving a federal award in excess of \$150,000.

- E. #. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the [insert federal awarding agency] and the Region 4 Office of the Environmental Protection Agency.

#### **Performance Bond**

For contracts that do not involve public works projects, a performance bond should be required only when necessary to protect against contract risk to the State. For agency term contracts, choose option #1 or option #2. For statewide contracts that do not involve awards to multiple contractors, choose option #3 or option #4. If unsure whether a performance bond is appropriate or which option is best, contact the CPO Risk Manager.

#### **Option 1**

- E.#. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Maximum Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.



**Option 2—Insert the term below only after obtaining an approved Rule Exception Request.**

**E. #.** Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a new performance bond in an amount of one hundred percent (100%) of the Maximum Liability, **Written Dollar Amount (\$Number)** covering each subsequent year of the Term, including any renewals or extensions. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond(s) as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

**Option 3**

**E. #.** Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations for the Term, as the Contract is extended or renewed.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

**Option 4—Insert the term below only after obtaining an approved Rule Exception Request.**

**E. #.** Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract, specifically faithful performance of the work in accordance with the plans, specifications, and Contract documents. The performance bond shall be in an amount equal to one hundred percent (100%) of the Estimated Liability, **Written Dollar Amount (\$Number)**. The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for the first year of the Term in the amount of **Written Dollar Amount (\$Number)** and, thereafter, a

new performance bond in the amount of Written Dollar Amount (\$Number) covering each subsequent year of the Term, including any renewals or extensions of the Contract. The Contractor shall provide performance bonds to the State prior to the Effective Date and thirty (30) days prior to the beginning of each renewal or extended Term.

Failure to provide to the State the performance bond as required under this Contract may result in this Contract being terminated by the State. The performance bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

### Payment Bond

Tenn. Code Ann. § 12-4-201 requires a payment bond for all public works projects in excess of one hundred thousand dollars (\$100,000). Insert option #1 for agency term contracts; insert option #2 for statewide contracts that do not involve awards to multiple contractors. If unsure whether a payment bond is appropriate, contact the CPO Risk Manager.

### Option 1

**E.#.** Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Maximum Liability Written Dollar Amount (\$ **Number**). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State of Tennessee Central Procurement Office's prior written approval.

### Option 2

**E.#.** Payment Bond. The Contractor shall provide to the State a payment bond guaranteeing that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance under this Contract with the additional obligation that such contractor shall promptly make payment of all taxes, licenses, assessments, contributions, penalties, and interest. The payment bond will be in an amount equal to twenty-five percent (25%) of the Estimated Liability **Written Dollar Amount** (\$ **Number**). The State reserves the right to review the bond amount and bonding requirements at any time during the Term. The Contractor shall submit the bond no later than the day immediately preceding the Effective Date and in the manner and form prescribed by the State at Attachment **Reference**. The bond shall be issued by a company licensed to issue such a bond in the State of Tennessee. The payment bond shall guarantee that the Contractor's subcontractors, laborers, and material suppliers will be paid for performance during the Term and all extensions or renewals of the Contract.

Failure to provide to the State the payment bond as required under this Contract may result in this Contract being terminated by the State. The payment bond required under this Contract shall not be reduced during the Term without the State's prior written approval.

#### **Option: Liquidated Damages**

The incorporation of the *pro forma* Liquidated Damages language below will require an approved Liquidated Damages Request. Deviations from this language shall be on a case-by-case basis and shall require an approved Rule Exception Request. In order to be enforceable, any liquidated damages amount must be a reasonable estimate of potential damages. If unsure whether the Section is appropriate, consult the CPO legal team.

**E.#.** Liquidated Damages. If **<insert description of event giving rise to liquidated damages>** occurs, ("Liquidated Damages Event"), the State may assess damages on Contractor ("Liquidated Damages"). The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for Contractor's failure to fulfill its obligations regarding the Liquidated Damages Event as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Attachment **Reference** and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Liquidated Damages Event, and are a reasonable estimate of the damages that would occur from a Liquidated Damages Event. The Parties agree that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity.

#### **Option: Liquidated Damages – HCFA**

The incorporation of the *pro forma* Liquidated Damages language below will require an approved Liquidated Damages Request. The below language may only be utilized by the Division of Health Care Finance & Administration (HCFA) and does not require an approved Rule Exception Request.

Add the following section to the *pro forma* contract Scope:

**A.#.** Control Memorandum Process.

- a. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or

timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.

- b. A CM may include one (1) or more of the five (5) components of the CM process described below:
  - (1) On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
  - (2) Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. The CD may include a Corrective Action Plan. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
  - (3) Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages. The NPD shall identify the Contract provision(s) on which the State determination rests.
  - (4) Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
  - (5) Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages, due to a performance or compliance failure, are actual damages or Liquidated Damages and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, that the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E. #., including Liquidated Damages as listed in Contract Attachment Reference, a corrective action plan, and/or termination of the Contract.
- d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM

which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within ten (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

**AND** add the following section to section E. Special Terms and Conditions:

**E.# Liquidated Damages.**

In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment **Reference** of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.#. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment **Reference** and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. The State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

**AND** add the following Contract Attachment, Liquidated Damages:

**ATTACHMENT REFERENCE****LIQUIDATED DAMAGES**

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess liquidated damages against Contractor for an amount that is reasonable in relation to the Contract performance or compliance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at HCFA's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of performance or compliance failure from HCFA and may continue until such time as the HCFA Deputy Commissioner, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount HCFA is to pay to Contractor in a given payment, HCFA shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by HCFA, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the HCFA Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar days of receipt of the notice from HCFA containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply to the Contract performance or compliance failures listed below. Contractor acknowledges that the actual damages likely to result from Contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach of the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.



### **Partial Takeover**

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E.#.** Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

### **Unencumbered Personnel**

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E.#.** Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.

### **Disclosure of Personally Identifiable Information**

Add the following Section as appropriate. If unsure whether the Section is applicable, consult the CPO legal team.

- E#** Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any

threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

#### **Federal Funding Accountability and Transparency Act**

Add the following Section if the contract will be funded in whole or part by federal funds anticipated to equal or exceed \$30,000.

**E.#.** Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
  - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and



- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

#### **Drug-Free Workplace.**

Add the following Section as appropriate:

- E. #.** **Drug-Free Workplace.** The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.

#### **Statewide Contract – CPO use Only**

Add the following Section if the contract will establish a Statewide Contract.

- E. #.** **Statewide Contract.** This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):
- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
  - b. Tennessee local governmental agencies;
  - c. members of the University of Tennessee or Tennessee Board of Regents systems;
  - d. any private nonprofit institution of higher education chartered in Tennessee; and,
  - e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c) (3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

#### **Statewide Contract Reports – CPO use Only**

Add the following Section if the contract will establish a Statewide Contract and modify as needed to request reports from the Contractor.

- E. #.** **Statewide Contract Reports.** All reports shall be submitted electronically in Microsoft Excel format. Reports shall include the ability to sort or summarize data in accordance with the Contract Administrator's specifications. All reports shall be provided at no additional cost to the State.

**Quarterly Reports:** Contractor(s) will submit quarterly reports to the Contract Administrator no later than **ten (10)** days after the end of the State's quarter (e.g. a fiscal year quarter 2 report for October - December is due no later than **January 10th**). At the Contract Administrator's sole discretion, the State may extend the time allowed to complete quarterly reports. Quarterly reports shall provide statistical data on all purchases under this Contract by Tennessee State Agencies and Authorized Users. At minimum, the quarterly report's statistical data shall be detailed and broken down by line item to include:

1. **Edison contract number**
2. **Contract line item number**
3. **Invoice date**

4. Invoice number
5. Supplier part number
6. Item or bundle description
7. Quantity purchased
8. Unit of measure
9. Unit of measure description
10. Name of State Agency or Authorized User
11. Identity of purchaser: State entity or non-State entity
12. State Agency location
13. Unit/Contract price per line item
14. List price as listed in supplier's catalog if catalog item
15. Subtotals for each category above
16. Grand totals for each category above

Custom Reports: When requested by the State, the Contractor shall submit custom reports to the Contract Administrator within thirty (30) days of the request.

#### Insurance of the State of Tennessee

Only use with prior approval of the CPO Risk Manager. This provision should only be used in the event the Contractor has requested the State's proof of self-insurance as part of the Contract.

**E.#.** State Insurance Program. The State of Tennessee self-insures its exposures in general liability, automobile liability, professional malpractice, and workers' compensation.

- a. The limits for general liability, professional malpractice, and automobile liability are three hundred thousand dollars (\$300,000) per person and one million dollars (\$1,000,000) per occurrence.
- b. The limits of liability under workers' compensation are those set forth in Tenn. Code Ann. § 50-6-101 et seq.

Copies of the statutes that authorize actions against the State of Tennessee, establish the State's limit of liability, and authorize self-insurance through the Risk Management Fund, are set forth in Tenn. Code Ann. § 9-8-101 et seq.

Persons wishing to file a claim for damages against the State of Tennessee arising from an act or omission of the State or its employees should file a claim with the State Treasury Department, Division of Risk Management and Claims Administration, 15<sup>th</sup> Floor, Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee 37243-0202. A copy of the State of Tennessee's Certificate of Self-Insurance may be obtained at [http://treasury.tn.gov/risk/PDFs/Certificate\\_of\\_Self\\_Insurance.pdf](http://treasury.tn.gov/risk/PDFs/Certificate_of_Self_Insurance.pdf) or is available upon request.

#### Protection of Federal Tax Information

Add one of the following options below **as a separate attachment** to the Contract for Contractors having access to Federal Tax Information ("FTI") during performance of the Contract. If unsure whether to include one of the options below, contact your agency's disclosure officer and legal counsel as appropriate.

FTI means any return or return information, as defined by I.R.C. § 6103(b)(2), received from the Internal Revenue Service or secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, or Bureau of Fiscal Service. FTI includes any information created by the recipient that is derived from return or return information. If the Contract involves disclosing FTI to a Contractor, the contracting State Agency shall provide the IRS at least forty-five (45) days notice before executing the Contract. Use Option #1 when the Contractor may have access to hard copies of FTI. Use Option #2 when the Contractor may have access to electronic forms of FTI.

## Option 1

## ATTACHMENT REFERENCE

### FEDERALLY MANDATED REQUIREMENTS FOR SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

### CONTRACT LANGUAGE FOR GENERAL SERVICES

#### I. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.

- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (7) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

## II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to

any person or entity not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION**

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

## **Option 2**

### **ATTACHMENT REFERENCE**

## **FEDERALLY MANDATED REQUIREMENTS FOR TECHNOLOGY SERVICES CONTRACTS WITH ACCESS TO FEDERAL TAX RETURN INFORMATION**

Federal Tax Information ("FTI") includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

### **CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES**

#### **I. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
- (10) The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.
- (11) (Include any additional safeguards that may be appropriate.)



## II. CRIMINAL/CIVIL SANCTIONS

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the State's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification and at least annually afterwards, Contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see



Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### III. INSPECTION

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect facilities and operations performing any work with FTI under this Contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

#### Survival

Add one of the two survival options as appropriate. If unsure whether a survival provision is appropriate, consult the CPO legal team.

#### Option 1

<b>E.#</b>	<u>Survival</u> . The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
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#### Option 2

<b>E.#</b>	<u>Survival</u> . The terms, provisions, representations, and warranties contained in Sections <b>&lt;list numbered Sections&gt;</b> of this Contract shall survive the completion of performance, termination or expiration of this Contract.
------------	--

#### Liens, Encumbrances, and Title

Add the following section as appropriate.

<b>E.#.</b>	<u>Liens, Encumbrances, and Title</u> . The Contractor owns and has good and marketable title to, and legal ownership of the goods, free and clear of any and all liens, security interests, pledges, mortgages, charges, limitations, claims, restrictions, rights of first refusal, rights of first offer, rights of first negotiation or other encumbrances of any kind or nature (collectively, "Encumbrances"). Upon delivery, without exception, the State will acquire from the Contractor legal and beneficial ownership of, good and marketable title to, and all rights to the goods to be sold to the State by the Contractor, free and clear of all Encumbrances. The Contractor shall, within ten (10) days after delivery deliver to the State if required by applicable law to establish or show evidence of
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ownership, any and all documents or certificates required to establish or show evidence of the State's ownership in the goods.

### Procurement of Recovered Materials

#### **E.#.** Procurement of Recovered Materials.

- a. In the Performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
- b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive
- c. Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- d. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

### Access to Records

#### **E.#.** Access to Records.

- a. The Contractor agrees to provide the State, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for purposes of making audits, examinations, excerpts, and transcriptions.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- d. In Compliance with the Disaster Recovery Act of 2018, the State and the Contractor acknowledge and agree that no language in this contract is intended to prohibit the audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

### Use of DHS Logo

**E.#.** Use of DHS Logo. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

### Compliance with Federal Law, Regulations, and Executive Orders

**E.#.** Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

### No Obligation by Federal Government

**E.#.** No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

## Compliance with The False Claims Act

**E.#.** Compliance with The False Claims Act. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

## Equal Employment Opportunity

**E.#.** Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- h. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Compliance with Contract Work Hours and Safety Standards Act**

##### **E.#. Compliance with Contract Work Hours and Safety Standards Act.**

- a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia

or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- c. Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Add the following Section as appropriate. Federal law prohibits the obligation or expending of federal award funds on certain telecommunication products or from certain entities for national security reasons. Use of this term is required when federal funds are involved pursuant to 2 C.F.R. Part 200, Appendix II, § K (citing 2 C.F.R. § 200.216).

a.

#### **Domestic Preference for Procurements.**

Add the following section as appropriate or when required by federal funding source. See 2 C.F.R. Part 200, Appendix II, § L (citing [2 C.F.R. § 200.322](#)).

- E. #.** Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Grantee should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### **Tennessee Department of Mental Health and Substance Abuse Services**

The Tennessee Department of Mental Health and Substance Abuse Services may add the following Sections as appropriate:

- E. #.** Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and

workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

**E. #.** Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.

**E. #.** Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

**E. #.** Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:

- a. to provide inpatient hospital or inpatient community mental health services;
- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
- d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit entity;

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| <ul style="list-style-type: none"> <li>f.</li> <li>g.</li> </ul> | <p>to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or</p> <p>to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.</p> |
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**License.**

If the contract will involve the State granting a license, e.g., use of the State of TN registered trademark, add the following Section as appropriate:

- |  |   |
|--|---|
| <p><b>E.#.</b></p> <ul style="list-style-type: none"> <li>a.</li> <li>i.</li> <li>ii.</li> <li>b.</li> <li>c.</li> <li>d.</li> <li>e.</li> <li>f.</li> <li>g.</li> </ul> | <p><u>License</u>. State hereby grants to Contractor the non-exclusive, non-transferable license, privilege and authority to use the Property in connection with the project as approved, set out in this Contract <b>at Section A/Attachment Reference</b> all other rights being reserved to State for the Term of this contract as provided below.</p> <p>Property. The “Property” licensed <b>[Insert word portion of mark, if any]</b> mark:</p> <p style="text-align: center;"><b>[Insert picture of mark]</b></p> <p>Exclusivity. None.</p> <p>Territory. Worldwide.</p> <p><u>Term</u>. Contractor shall begin to use the Property as set out in <b>Contract Section A/Attachment Reference</b> and shall cease upon termination of the Contract unless otherwise agreed to herein.</p> <p><u>Use Limitations and Collateral Materials</u>. The Property may be used on signs, promotional materials, marketing materials, Contractor’s visitor website, and/or as otherwise set out in <b>Contract [insert Contract #], Section A/Attachment Reference</b>. The License also includes the right to create and use promotional, advertising and packing material in connection with marketing of the services. In advertising and promoting with use of the Property, Contractor shall seek prior approval as set out in this Section. The Contractor does not have any rights to use the Property on any consumer products or merchandise rights.</p> <p><u>Use of Signage and Other Materials</u>. Upon expiration of this License, Contractor shall cease use of the Property on current materials. If this License is terminated earlier than contemplated by this Contract, Contractor and State shall negotiate in good faith the wind up of the License.</p> <p><u>Sub-licensing</u>. Sub-licensing is not allowed.</p> <p><u>Approvals</u>. All use of the Property shall require State’s prior written approval. Failure to obtain approvals at all stages shall be cause for termination of Contractor’s use of the Property, only, and not the remainder of the Contract unless failure to use the Property results in a material breach.</p> <p><u>Intellectual Property Notices</u>. The Property shall always be displayed with the “®” symbol and the following notice shall appear, where space permits, on all marketing or collateral materials bearing the Property:</p> |
|--|---|



[Insert word portion of Mark, if any] is a registered trademark and is used under license to the Contractor.

- h. Exclusive Property of State. The Property is and shall remain the exclusive property of State and all rights arising from the use of the Property, shall inure to State. Contractor acknowledges that it does not now have and in the future will not assert any right, title or interest of any kind or nature whatsoever in or to the Property nor will it change or contest any of State's rights therein.
- i. Royalty Rate. This License shall be royalty free.

## SIGNATURES

Draft the Contract so that the signature section immediately follows the previous section text separated by only one blank line. Do NOT insert an arbitrary page break prior to the signature section.

By contract signature, the contracting agency head shall assure and affirm that:

1. if there is a Maximum Liability included in the Contract, then there is a balance in the appropriation from which obligations under the Contract are required to be paid that is not already encumbered to pay other obligations;
2. the contracting agency maintains documentation of a fair and impartial contractor selection in full compliance with the approved procurement methodology as indicated by the summary cover sheet; and,
3. the proposed Scope is clear and correct, adequate for all legal and enforcement purposes, and sufficiently detailed to ensure Contractor accountability and results.



**From:** [Nancy Myers](#)  
**To:** [Nancy Myers](#)  
**Subject:** FW: Eforms 100233 and 100176  
**Date:** Wednesday, November 17, 2021 3:03:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image005.png](#)  
**Importance:** High

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**From:** Mike Bentheimer <Mike.Bentheimer@tn.gov>  
**Sent:** Wednesday, November 17, 2021 10:13 AM  
**To:** Terry Mason <Terry.Mason@cot.tn.gov>  
**Cc:** COT CPC <COT.CPC@cot.tn.gov>; Nancy Myers <Nancy.Myers@tn.gov>; Mark Naftel <Mark.Naftel@tn.gov>  
**Subject:** RE: Eforms 100233 and 100176  
**Importance:** High

Hey Terry,

Talked to TBI, the intention was to only use this to execute an hourly project due to a legal change but you bring up a good point in that what if the change in law requires us to adjust the payment structure, which would require an amendment instead. In light of that Mark has drawn up some additional language and If you are okay with the changes presented here, we will get with Idemia and get their approval.

*Notwithstanding anything to the contrary in this Contract, if, following the Effective Date of the Contract, there is a significant change to an existing State law, regulation or policy, or if a new State law, regulation or policy is enacted, that significantly affects the services provided under this Contract, ~~the Contractor's compensation shall be equitably adjusted to compensate the Contractor for any additional work necessary to comply with the changed or new law, regulation, or policy~~ a Change Order may be required. In the event that a Change Order will not be sufficient to meet any such legally required legal changes, the Contract may be amended. Changes to State laws, regulations, or policies necessary to comply with CJIS requirements shall not be subject to this Section A.17*

Thanks,

Mike



**Mike Bentheimer** | Sourcing Account Specialist  
Central Procurement Office  
Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
p. 615-532-1922  
[Mike.Bentheimer@tn.gov](mailto:Mike.Bentheimer@tn.gov)  
[tn.gov/generalservices/](http://tn.gov/generalservices/)  
[Recognize this Employee](#)

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**From:** Terry Mason <[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov)>  
**Sent:** Wednesday, November 17, 2021 9:26 AM  
**To:** Mike Bentheimer <[Mike.Bentheimer@tn.gov](mailto:Mike.Bentheimer@tn.gov)>  
**Cc:** COT CPC <[COT.CPC@cot.tn.gov](mailto:COT.CPC@cot.tn.gov)>  
**Subject:** RE: Eforms 100233 and 100176

Hi Mike,

I have approved the SCR but have concerns pertaining to the RER and the A.17.d language below:

A.17.d. Notwithstanding anything to the contrary in this Contract, if, following the Effective Date of the Contract, there is a significant change to an existing State law, regulation or policy, or if a new State law, regulation or policy is enacted, that significantly affects the services provided under this Contract, the **Contractor's compensation shall be equitably adjusted** to compensate the Contractor for any additional work necessary to comply with the changed or new law, regulation, or policy. Changes to State laws, regulations, or policies necessary to comply with CJIS requirements shall not be subject to this Section A.17.

The RER justification states:



**Compensation for "Change Order" work is set forth in Contract Section C.3.c. as \$200 per hour. What is the intent of the "Contractor's compensation shall be equitably adjusted" language as any adjustments to the compensation set forth under C.3. would require an amendment?**

Thank you, Terry

**Terry Mason**, CGFM  
*Specialist*  
Comptroller of the Treasury  
Office of Management Services  
425 Rep. John Lewis Way N. | Nashville, TN 37243  
[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov) | 615.401.7723



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**From:** Mike Bentheimer <[Mike.Bentheimer@tn.gov](mailto:Mike.Bentheimer@tn.gov)>  
**Sent:** Tuesday, November 16, 2021 11:21 AM

**To:** Terry Mason <[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov)>

**Subject:** Eforms 100233 and 100176

Good Morning Terry,

TBI was inquiring about these two Eforms (RER and SCR respectively) as they are related to a contract they are planning on submitting to FRC today or tomorrow. Do you have an update I can share with them? The SCR had previously been approved in the old eforms, but the dollar amount increased so I had TBI resubmit a new SCR.

Thanks,

Mike



**Mike Bentheimer** | Sourcing Account Specialist

Central Procurement Office

Tennessee Tower, 3<sup>rd</sup> Floor

312 Rosa L. Parks Ave., Nashville, TN 37243

p. 615-532-1922

[Mike.Bentheimer@tn.gov](mailto:Mike.Bentheimer@tn.gov)

[tn.gov/generalservices/](http://tn.gov/generalservices/)

[Recognize this Employee](#)

# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable. NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant. To requests approval for a Special Contract Request, complete and submit this e-Form and rout for approvals by selecting the appropriate Type of Contract or Procurement Method below. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

Approval of the SCR does not constitute approval of the final contract.

Request Tracking #	
1. Contracting Agency	34800
2. Type of Contract or Procurement Method	<input type="checkbox"/> Standard <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input type="checkbox"/> Technology <input type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Mark Naftel mark.Naftel@tn.gov 615.259.2321 (c)
4. Brief Goods or Services Caption	The provision of an upgrade to TBI's AFIS system including video analytics, migration of TBI's AFIS data, installation, training, cloud-based storage, and support and maintenance.
5. Description of the Goods or Services to be Acquired	IDEMIA Identity & Security USA LLC (IDEMIA) will upgrade its current Automated Fingerprint Identification System (AFIS) provided to the TBI to IDEMIA's new AFIS. The new AFIS will include IDEMIA's facial recognition product, Face Expert, and Augmented Vision (on-premises) video analytics Applications. The new AFIS will include hosting of TBI fingerprint data on the Microsoft Azure Government Cloud. IDEMIA will provide a seamless migration of State's data from the existing TBI AFIS, maintain workflows and interfaces, and provide a secure, cloud-based hosted AFIS. IDEMIA will provide Maintenance and Support and Evergreen service (continuous software and hardware updates) for the Term. IDEMIA's AFIS shall include: FBI CJIS security compliance, high availability architecture, disaster recovery in the cloud, a dedicated test environment for use by TBI, and continuous access to IDEMIA's latest AFIS technology.
6. Proposed Contractor	IDEMIA Identity & Security, LLC

<b>Request Tracking #</b>	
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> – NOT required for a TN state education institution	IDEMIA Identity & Security, LLC 5515 East LaPalma Avenue, Suite 100 Anaheim, CA 92807
<b>8. Proposed Contract Period – with ALL options to extend exercised</b> The proposed contract start date shall follow the approval date of this request.	120 months
<b>9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request</b> – information technology (N/A to THDA)	Attached
<b>10. Human Resources Pre-Approval Endorsement Request</b> – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	Not Applicable
<b>11. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	No
<b>12. Maximum Contract Cost – with ALL options to extend exercised</b>	\$ 15729556
<b>13. Was there an initial government estimate? If so, what amount?</b>	No
<b>14. Cost Determination Used- How did agency arrive at the estimate of expected costs?</b>	Proposal from Contractor and negotiations.
<b>15. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable</b>	Prices are based on what TBI currently pays Contractor, Contractor's proposal, and further price negotiations.
<b>16. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.</b>	Phone conferences and emails.
<b>17. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	TBI is responsible for providing criminal and background fingerprinting services in the State. An up to date and reliable AFIS is essential for TBI's operations.
<b>18. Proposed contract impact on current State operations</b>	IDEMIA Identity & Security, LLC

Request Tracking #	
<p>19. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>IDEMIA is the current provider of TBI's AFIS. It is not realistically possible for TBI to move to another provider's AFIS given TBI's investment in equipment, software, training, and use of IDEMIA's AFIS. Continuity is of critical importance. It would cost tens of millions of dollars, and a very long investment of time to replace IDEMIA's AFIS with that of a competitor and would result in great disruptions to TBI's operations. Only IDEMIA can maintain and support TBI's current AFIS and seamlessly migrate the current AFIS to a next generation system.</p> <p>This SCR was previously approved based on the foregoing. Subsequent negotiations disclosed that the Contract needed to be revised to provide for the possibility of Change Orders, with a consequent revision in the Maximum Liability by an amount of 7% of the original Maximum Liability. TBI therefore requests approval of Contract Maximum Liability to the sum of \$15,729,556.00.</p>
<b>For No Cost and Revenue Contracts Only</b>	
<p>20. What costs will the state incur as a result of this contract? If any, please explain.</p>	
<p>21. What is the total estimated revenue that the State would receive as a result of this contract?</p>	0
<p>22. Could the state also contract with other parties interested in entering substantially the same agreement? Please explain.</p>	N
<p>23. Summary of State responsibilities under proposed contract</p>	
<b>For Sole Source and Proprietary Procurements Only</b>	
<p>24. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</p>	IDEMIA is the current provider of TBI's AFIS.
<p>25. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</p>	<p>Yes Method: Sole Source Name/ Address: IDEMIA and its predecessor, MorphoTrak, LLC.</p>

Request Tracking #	
26. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	It would cost tens of millions of dollars and a very long investment of time to replace IDEMIA's AFIS with that of a competitor and would result in great disruptions to TBI's operations. The Contract includes support and maintenance of the existing AFIS system and only IDEMIA can provide that maintenance and support.

# Form Approvals

Form Id:100176

Current Date Time	Step Title	Description	Form Action	Time Elapse
2021-11-08-10.40.51.000000	CPO Standard Forms Approver	Kevin Wieck	Approved	7 days 2 hours 55 minutes
2021-11-08-10.41.53.000000	CPO Tech Forms Approver	Kevin Wieck	Approved	1 minute
2021-10-29-15.48.17.000000	Saved	Phyllis A Sawyer	Save	
2021-11-16-20.35.31.000000	COT Treasury Forms Approver	Terry L Mason	Authorized	6 days 6 hours 26 minutes
2021-10-29-15.54.43.000000	Initiated	Phyllis A Sawyer	Submitted	6 minutes
2021-11-01-07.44.59.000000	CPO Sourcing Forms Approver	Michael Bentheimer	Approved	2 days 10 hours 17 minutes
2021-11-10-14.09.06.000000	CPO Director Forms Approver	Christopher Salita	Approved	2 days 3 hours 27 minutes
2021-10-29-21.27.25.000000	Agency Forms Approver	Melissa D Lovan	Approved	5 hours 32 minutes
2021-11-16-20.35.35.000000	System		Executed	< 1 minute

Comment History:



**TO:** Chris Salita, Director of Sourcing  
CPO Staff Attorney-Sourcing

**FROM:** Mike Bentheimer, Sourcing Analyst

**DATE:** November 1, 2021

**SUBJECT:** Recommendation of Special Contract Request (seq 100176)

TBI is requesting a 120 month contract with IDEMA for upgrading their AFIS system to a cloud environment along with additional software/hardware. Moving to another company's system would cost the State millions of dollars in both real expenses and indirect ramp up/conversion/training expenses that would cause significant disruption to operations and investigations. This SCR is just an update of the Max Liability from the previous request, #5293.

I, Mike Bentheimer, recommend this SCR-Sole Source request for approval.

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Director of Sourcing

Date

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Staff Attorney

Date

**From:** [Terry Mason](#)  
**To:** [Mike Bentheimer](#)  
**Cc:** [COT CPC](#); [Nancy Myers](#); [Mark Naftel](#)  
**Subject:** RE: Eforms 100233 and 100176  
**Date:** Wednesday, November 17, 2021 3:36:46 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Hi Mike,

I'm Ok with revised language below.

I will recycle the RER eform so it can be updated with the new language.

Thank you, Terry

***Terry Mason***, CGFM  
*Specialist*  
Comptroller of the Treasury  
Office of Management Services  
425 Rep. John Lewis Way N. | Nashville, TN 37243  
[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov) | 615.401.7723



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**From:** Mike Bentheimer <Mike.Bentheimer@tn.gov>  
**Sent:** Wednesday, November 17, 2021 10:13 AM  
**To:** Terry Mason <Terry.Mason@cot.tn.gov>  
**Cc:** COT CPC <COT.CPC@cot.tn.gov>; Nancy Myers <Nancy.Myers@tn.gov>; Mark Naftel <Mark.Naftel@tn.gov>  
**Subject:** RE: Eforms 100233 and 100176  
**Importance:** High

Hey Terry,

Talked to TBI, the intention was to only use this to execute an hourly project due to a legal change but you bring up a good point in that what if the change in law requires us to adjust the payment structure, which would require an amendment instead. In light of that Mark has drawn up some additional language and If you are okay with the changes presented here, we will get with Idemia and get their approval.

Notwithstanding anything to the contrary in this Contract, if, following the Effective Date of the Contract, there is a significant change to an existing State law, regulation or policy, or if a new State law, regulation or policy is enacted, that significantly affects the services provided under this Contract, ~~the Contractor's compensation shall be equitably adjusted to compensate the Contractor for any additional work necessary to comply with the changed or new law, regulation, or policy~~ a Change Order may be required. In the event that a Change Order will not be sufficient to meet any such legally required legal changes, the Contract may be amended. Changes to State laws, regulations, or policies necessary to comply with CJIS requirements shall not be subject to this Section A.17

Thanks,

Mike



**Mike Benthaimer** | Sourcing Account Specialist  
Central Procurement Office  
Tennessee Tower, 3<sup>rd</sup> Floor  
312 Rosa L. Parks Ave., Nashville, TN 37243  
p. 615-532-1922  
[Mike.Benthaimer@tn.gov](mailto:Mike.Benthaimer@tn.gov)  
[tn.gov/generalservices/](http://tn.gov/generalservices/)  
[Recognize this Employee](#)

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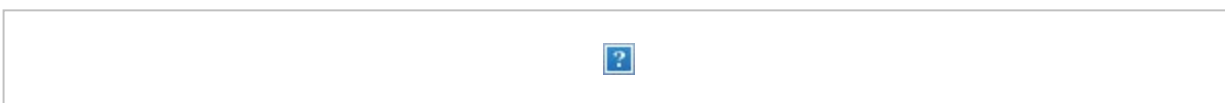
**From:** Terry Mason <[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov)>  
**Sent:** Wednesday, November 17, 2021 9:26 AM  
**To:** Mike Benthaimer <[Mike.Benthaimer@tn.gov](mailto:Mike.Benthaimer@tn.gov)>  
**Cc:** COT CPC <[COT.CPC@cot.tn.gov](mailto:COT.CPC@cot.tn.gov)>  
**Subject:** RE: Eforms 100233 and 100176

Hi Mike,

I have approved the SCR but have concerns pertaining to the RER and the A.17.d language below:

A.17.d. Notwithstanding anything to the contrary in this Contract, if, following the Effective Date of the Contract, there is a significant change to an existing State law, regulation or policy, or if a new State law, regulation or policy is enacted, that significantly affects the services provided under this Contract, the **Contractor's compensation shall be equitably adjusted** to compensate the Contractor for any additional work necessary to comply with the changed or new law, regulation, or policy. Changes to State laws, regulations, or policies necessary to comply with CJIS requirements shall not be subject to this Section A.17.

The RER justification states:



**Compensation for "Change Order" work is set forth in Contract Section C.3.c. as \$200 per hour. What is the intent of the "Contractor's compensation shall be equitably adjusted" language as any adjustments to the compensation set forth under C.3. would require an**

**amendment?**

Thank you, Terry

**Terry Mason**, CGFM

*Specialist*

Comptroller of the Treasury

Office of Management Services

425 Rep. John Lewis Way N. | Nashville, TN 37243

[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov) | 615.401.7723



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**From:** Mike Bentheimer <[Mike.Bentheimer@tn.gov](mailto:Mike.Bentheimer@tn.gov)>

**Sent:** Tuesday, November 16, 2021 11:21 AM

**To:** Terry Mason <[Terry.Mason@cot.tn.gov](mailto:Terry.Mason@cot.tn.gov)>

**Subject:** Eforms 100233 and 100176

Good Morning Terry,

TBI was inquiring about these two Eforms (RER and SCR respectively) as they are related to a contract they are planning on submitting to FRC today or tomorrow. Do you have an update I can share with them? The SCR had previously been approved in the old eforms, but the dollar amount increased so I had TBI resubmit a new SCR.

Thanks,

Mike



**Mike Bentheimer** | Sourcing Account Specialist  
Central Procurement Office

Tennessee Tower, 3<sup>rd</sup> Floor

312 Rosa L. Parks Ave., Nashville, TN 37243

p. 615-532-1922

[Mike.Bentheimer@tn.gov](mailto:Mike.Bentheimer@tn.gov)

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